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NEW JERSEY BOARD OF PUBLIC UTILITIES

Courtesy Copy of Proposal

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Water and Wastewater

Proposed New Rules: N.J.A.C. 14:9-8

Proposed Readoption with Amendments: N.J.A.C. 14:9

Proposed Amendment: N.J.A.C. 14:3-7.12

| | |
|----------------|---|
| Authorized By: | Board of Public Utilities, Jeanne M. Fox, President, Frederick F. Butler, Connie O. Hughes, Joseph Fiordaliso and Christine V. Bator, Commissioners. |
| Authority: | N.J.S.A. 48:2-13 and 48:2-20, 48:2-24, 48:2- 27, 48:3-3, 48:3-7.8, 48:3-12 and 58:11-59 |

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Calendar Reference: See Summary below for an explanation of
exception to calendar requirement.

BPU Docket Number: WX06020069

Proposal Number: PRN 2006-

Submit comments by June 2, 2006 to:

Kristi Izzo, Secretary

Board of Public Utilities

ATTN: BPU Docket Number WX06020069

Two Gateway Center

Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Public Utilities ("Board") is proposing to readopt its rules governing water and wastewater utilities, found at N.J.A.C. 14:9. In accordance with the "sunset" provisions of Executive Order No. 66 (1978), these rules will expire on March 27, 2006, if not readopted. In addition, the Board is proposing two new subchapters and is amending the rules for all utilities at N.J.A.C. 14:3-7.12(f) to ensure consistency with the changes to chapter 9.

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As the Board has provided a 60-day comment period on the proposed readoption with amendments and new rules, they are exempt from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Following is a section-by-section summary of the proposal:

Changes are proposed to existing N.J.A.C. 14:3-7.12(f), in the Board's rules for all utilities, which governs the discontinuance of water service for use in a fire suppression system. The proposal would amend this subsection so that water utilities would no longer be required to ask customers with fire suppression systems to provide the policy number and name of the insurance company that provides the customer's insurance protection. This is necessary to make this provision consistent with the proposed new fire protection rules at N.J.A.C. 14:9-8.

Amendments are also proposed at N.J.A.C. 14:3-13.2 to the definitions of the terms: "Base cost of wastewater treatment", "base cost of purchased water", "Purchased water adjustment clause" and "Purchased sewerage treatment adjustment clause" The proposed amendments will ensure that these definitions are consistent with the amendments to Chapter 9, where those terms are also used extensively.

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Throughout chapter 9, the term "sewerage" is proposed to be replaced with "wastewater." This change will more accurately reflect the type of service which is offered by wastewater utilities.

SUBCHAPTER 1 GENERAL PROVISIONS AND DEFINITIONS

Proposed new N.J.A.C. 14:9-1.1 outlines the scope of chapter 9, including the entities regulated; and provides a cross reference to the Board's rules for all utilities.

Proposed new N.J.A.C. 14:9-1.2 provides a list of defined terms that are commonly used throughout chapter 9. The Board is proposing to remove from each existing subchapter all definitions of terms that are used in multiple subchapters, and to consolidate these common definitions in new section 1.2. Many of the definitions are reworded for clarity without changes in substance. The proposed new definitions section includes new definitions for the terms: "Board" and "NJDEP", while the definitions for "Wastewater utility", "Water purveyor" and "Water utility" are merely clarified versions of definitions being relocated from existing N.J.A.C. 14:9-7.2 and 14:9-8.2. The new definitions for "Board" and "NJDEP" are abbreviations for New Jersey Board of Public Utilities and New Jersey Department of Environmental Protection.

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SUBCHAPTER 2 PLANT

Proposed N.J.A.C. 14:9-2.1 (currently N.J.A.C. 14:9-1.1), which governs plant construction standards for water and wastewater utilities, is being recodified, and clarifying amendments are proposed. A reference to New Jersey Department of Environmental Protection rules is deleted, since the DEP rules themselves require compliance and the Board need not repeat the requirement. Finally, a provision for bringing disputes to the Board is deleted as redundant with Board rules at N.J.A.C. 14:1.

Proposed N.J.A.C. 14:9-2.2 (current N.J.A.C. 14:9-1.2) governs inspection of valves by water and wastewater utilities, and the testing of hydrants by water utilities. The section is proposed to be reworded for clarity, and broken into smaller subsections. In addition proposed new N.J.A.C. 14:9-2.2(g) adds a cross reference to inspection provisions in the Board's rules for all utilities at N.J.A.C. 14:3-2.5.

SUBCHAPTER 3 QUALITY OF SERVICE

Proposed N.J.A.C. 14:9-3.1 (current N.J.A.C. 14:9-2.1) which requires water utilities to supply water at adequate pressure and volume to the curb and sufficient pressure and volume at all fire hydrants, is being readopted without substantive amendment, but with clarifying changes.

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Proposed N.J.A.C. 14:9-3.2 (current N.J.A.C. 14:9-2.2), pertains to the quality of water and requires water utilities to notify the Board when their water quality does not conform to all applicable laws or regulations, is being readopted without substantive amendment, except that a specific reference to NJDEP's water quality rules is added to ensure that the regulated community is aware of additional NJDEP requirements that apply to them.

Proposed N.J.A.C. 14:9-3.3 (current N.J.A.C. 14:9-2.3), which requires wastewater utilities to operate their facilities so as not to threaten public health or welfare, is being readopted without substantive amendment.

SUBCHAPTER 4 METERS

Existing N.J.A.C. 14:9-3.1, 3.2, and 3.3, which impose standards for testing meters, the frequency of testing, and the accuracy of meters, applies to water utilities with more than 100 meters in use. These three sections are proposed for deletion, to be replaced with proposed N.J.A.C. 14:9-4.1. Proposed N.J.A.C. 14:9-4.1 contains the substance of the deleted sections, reorganized and consolidated into one section.

SUBCHAPTER 5 PRESERVATION OF RECORDS

Existing N.J.A.C. 14:9-5.1, which incorporates by reference the latest version of the National Association of Regulatory Utility Commissioners' (NARUC)

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“Regulations to Govern the Preservation of Electric, Gas and Water Utilities” and imposes these requirements on water and wastewater utilities, is being proposed for readoption without substantive amendment.

SUBCHAPTER 6 SMALL WATER COMPANY AND SMALL SEWER COMPANY TAKEOVER ACT

Existing subchapter 6 governs the takeover of small water companies that fail to adhere to certain environmental laws. The subchapter is proposed to be substantially amended to incorporate the amendments made to N.J.S.A. 58:11-59 et seq. (P.L. 1999, c. 296, effective December 23, 1999), commonly referred to as the “Small Water Company and Small Sewer Company Takeover Act” (Act). The primary thrust of these amendments is to add sewer companies as entities subject to takeover under the Act.

Subchapter 6 establishes a procedure to guide the Board and the Department of Environmental Protection (NJDEP) in the exercise of their authority to require the acquisition of small water and/or sewer companies that have failed to comply with regulatory standards concerning the availability and quality of potable water or the discharge of treated sewage to the State’s waters. This rule authorizes the Board and the Department, after appropriate notice, to jointly order a close and proximate entity to take over a troubled small water and/or sewer system. The

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NJDEP has corresponding rules to detail its role in implementing the Act (see N.J.A.C. 7:19-5)

Throughout the rules, provisions are amended to bring small sewer companies under the rules. While the proposed amendments revise the rules in accordance with the statutory amendments, they also make other changes. These are discussed below in a section-by-section summary of the proposed amendments.

N.J.A.C. 14:9-6.1, which identifies the purposes of the subchapter, is amended to include noncomplying small sewer companies, and to make the provision more precise.

N.J.A.C. 14:9-6.2 defines terms used in the subchapter. Cross references are added to other definitions provisions that apply to this subchapter. In addition, the Board proposes to amend several definitions for precision and clarity, and proposes a new definition of "small sewer company," which is necessary as a result of the inclusion of small sewer companies under the Act. Other proposed new definitions are "acquisition cost," "improvement cost" and "party to the proceedings." The term "actual or imminent public health problems" is changed to "actionable violation," and clarified. Clarifications are also proposed to "capable," "Commissioner," "proximate," and "small water company." The

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definitions of "public advocate" and "division" are deleted because they are no longer used in the rules.

No changes are proposed to N.J.A.C. 14:9-6.3, which provides for liberal construction and future amendment of the rules; and N.J.A.C. 14:9-6.5, which provides for the severability of any portion of the rules. Existing N.J.A.C. 14:9-6.4, which provides that the subchapter applies to all small water companies in New Jersey, is amended to include small sewer companies.

N.J.A.C. 14:9-6.6, which addresses applicability, is amended to include small sewer companies and is clarified by use of the defined term "actionable violation." Existing N.J.A.C. 14:9-6.6(b) is proposed to be deleted as redundant. Proposed new N.J.A.C. 14:9-6.6(b) and (c) clarify the respective roles of the Board and the Department in implementing the subchapter.

N.J.A.C. 14:9-6.7 sets out the enforcement options available to the Department prior to the implementation of procedures under the Act. Minor clarifications are proposed, as well as a new N.J.A.C. 14:9-6.7(c)2, which provides that a small water company and a small sewer company that were established by the same developer to serve a franchise area, and are under common control, may be treated as one company for purposes of a takeover proceeding.

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N.J.A.C. 14:9-6.8 requires a joint informational public hearing by the Department and the Board and specifies notice, conduct and content of the hearings. The Board proposes to amend N.J.A.C. 14:9-6.8 to include small sewer companies, and to make minor clarifications. The Board further proposes to amend this section to require that the Department's presentation at the hearing be prepared in consultation with the Board, and that the Board shall also make a presentation, prepared in consultation with the Department. The Board's presentation must include estimates of the cost of improvements and acquisition costs to be borne by the current users of the small water company and/or small sewer company. The Department's presentation shall include, to the extent possible, a description of the terms of the administrative consent order that shall be executed by the designated acquiring public or private entity and the Department.

Proposed new N.J.A.C. 14:9-6.8(k) shields acquiring entities from liability for violations that occurred prior to the acquisition. Proposed new N.J.A.C. 14:9-6.8(o) allows for written comments for 15 days after the joint informational hearing.

Existing N.J.A.C. 14:9-6.9 requires a contested case hearing and specifies the nature, conduct and content of that hearing. The Board proposes to delete this section. The procedure for a contested case hearing is instead addressed in proposed new N.J.A.C. 14:9-6.12.

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Existing provisions at N.J.A.C. 14:9-6.8(j) through (i) are recodified in the proposal at N.J.A.C. 14:9-6.9, Joint public hearing report, and are modified for clarity. New provisions are proposed that would require web posting of the report, and allow for filing of comments on the report through electronic mail.

Existing N.J.A.C. 14:9-6.10 pertains to the requirement for issuance of a joint takeover order by the Department and the Board. The Board proposes to amend this section by including small sewer companies and by clarifying the procedure for either terminating the procedure or proceeding to a final takeover order. The Board proposes to further amend this section to indicate that the proposed joint takeover order shall:

1. Revoke the franchise previously issued by the Board to the small water company, small sewer company, or both;
2. Render the owner or operator of the company or companies unfit to hold another water or wastewater franchise to provide water and/or sewer service;
3. Permit the acquiring entity to commence eminent domain proceedings if an agreement on acquisition cost cannot be reached between the acquiring entity and the troubled system(s); and
4. Require that the proposed joint takeover order be served upon parties to the proceedings and other interested persons.

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Existing N.J.A.C. 14:9-6.11 pertains to the methodology of determining acquisition costs in the absence of an agreement between the acquiring entity and the troubled system(s). The Board proposes to amend this section for clarity, and to include small sewer companies.

N.J.A.C. 14:9-6.12 is a proposed new section that sets forth the process for contesting a proposed joint takeover order. Much of the content of existing N.J.A.C. 14:9-6.9 can be found in other rules. Therefore, existing N.J.A.C. 14:9-6.9 is proposed for deletion and instead cross references to these other rules are added to proposed new N.J.A.C. 14:6.12. The proposed new section sets forth the contents of a request for a contested case hearing, and standards and procedures for denying or granting a contested case hearing. The section also sets forth the mechanism by which the proposed joint takeover order becomes a final order.

Existing N.J.A.C. 14:9-6.12, recodified in the proposal as N.J.A.C. 14:9-6.13, pertains to compliance with a joint takeover order. The Board proposes to amend this section to include noncomplying small sewer companies compliance and the violations relating thereto. Redundant enforcement provisions are also deleted.

Existing N.J.A.C. 14:9-6.13, recodified in the proposal as N.J.A.C. 14:9-6.14, provides that the Board may allow an acquiring entity to collect a differential rate from customers of the noncomplying small water company. The Board proposes

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to clarify this section and amend it to include small sewer companies.

Proposed N.J.A.C. 14:9-6.15 is a new section that incorporates provisions of the Act which protect an acquiring entity from liability for hazardous substance discharges that occurred prior to the acquisition of the small water company or sewer company.

Proposed N.J.A.C. 14:9-6.16 is a new section that incorporates provisions of the Act authorizing the Board and/or the Department to levy penalties for violation on an owner or operator of a small water company, small sewer company, or both, who fails to comply with the Act, the rules, or a joint takeover order.

SUBCHAPTER 7 PURCHASED WATER AND WASTEWATER ADJUSTMENT CLAUSES

Existing subchapter 7 provides for a water utility to include in its tariff a purchased water adjustment clause (PWAC), which authorizes the utility to include in its rates the increases or decreases in charges to the utility by water purveyors. Existing subchapter 8 contains very similar provisions for purchased sewerage treatment adjustment clauses. The proposal consolidates the two subchapters at proposed N.J.A.C. 14:9-7.

Existing N.J.A.C. 14:9-7.1(a) and (b), which address applicability, are proposed for deletion because they are redundant with other provisions in

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chapter 9 and Chapter 1. Proposed new N.J.A.C. 14:9-7.1 sets forth the scope of subchapter 7, as well as its applicability, and general provisions. Provisions are added to extend the subchapter's coverage to wastewater treatment utilities, and to clarify the difference between the true up process and the process of obtaining Board approval of the next year's adjustment of the PWAC or PSTAC.

N.J.A.C. 14:9-7.2, which defines certain terms that are used in subchapter 8, is being proposed for readoption with amendments that move the defined terms "public entity", "water purveyor" and "water utility" to N.J.A.C. 14:9-1.2 because these terms are used throughout chapter 9. In addition, the definition of "PWAC rate case expenses" is deleted and the substance of the definition is moved into proposed N.J.A.C. 14:9-7.6(b)10. Definitions of "base cost of purchased wastewater treatment" and "base cost of purchased wastewater treatment" are relocated here from existing N.J.A.C. 14:9-8.2, and amended for clarity. The definition of "revenue tax factor" is proposed for deletion because the substance of it has been moved into N.J.A.C. 14:9-7.5. A new definition of "operating and maintenance expenses" is added for use in eligibility provisions in N.J.A.C. 14:9-7.1. Clarifying changes are proposed to the remaining definitions. Finally, the definition for "public entity" has been proposed for deletion because it is no longer used in the rules.

Existing N.J.A.C. 14:9-7.3 governs the submittal of petitions for purchased water adjustment clauses, the time for filing petitions, and truing up schedules.

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The proposal breaks up this section into four sections. Proposed N.J.A.C. 14:9-7.3 provides for the filing of a petition for approval of an initial PWAC or PSTAC, for Board review of the petition in accordance with N.J.A.C. 14:1, and sets the term of an initial PWAC or PSTAC at one year.

Proposed new N.J.A.C. 14:9-7.4 contains requirements for year-end true up petitions. The substance of these provisions is the same as that in existing N.J.A.C. 14:9-7.3(c) and (d), except that more detail is added to clarify the nature of a true-up petition and the distinction between a true-up petition and a petition for adjustment of the authorized charge under a PWAC or PSTAC.

Proposed new N.J.A.C. 14:9-7.5 contains the substance of existing N.J.A.C. 14:9-7.4(d), which requires a separate listing of PWAC charges on a customer's bill. The section is expanded to cover purchased wastewater treatment adjustment clauses.

Existing N.J.A.C. 14:9-7.4 is recodified as proposed N.J.A.C. 14:9-7.6. This section sets forth the requirements for a petition submitted under the subchapter, whether for approval of an initial or renewed PWAC, a PSTAC, or a true up schedule. The section is reorganized for clarity, and additional detail is added. In addition, proposed new N.J.A.C. 14:9-7.6(b)¹¹ provides that a request for deferred accounting must be included in a PWAC or PSTAC petition.

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The substance of the definition of "rate case expenses" is relocated in proposed N.J.A.C. 14:6(b)10, since this is the only place in the rule where the term is used. The substance of existing N.J.A.C. 14:9-7.4(b) is relocated to N.J.A.C. 14:9-7.3(c). The substance of existing N.J.A.C. 14:9-7.4(c) is proposed for deletion as redundant with proposed N.J.A.C. 14:9-7.4. The substance of existing N.J.A.C. 14:9-7.4(d) is relocated to the general provisions section at N.J.A.C. 14:9-7.3(c). The substance of existing N.J.A.C. 14:9-7.4(g) is relocated to proposed N.J.A.C. 14:9-7.3(c).

Amendments are proposed to existing N.J.A.C. 14:9-7.5 (recodified in the proposal at N.J.A.C. 14:9-7.6), which provides a formula for determination of PWAC costs when a utility is charging customers on a flat rate basis. First, the section is expanded to cover purchased wastewater treatment adjustment clauses. Second, explanatory material is added at proposed N.J.A.C. 14:9-7.6(a) and (b). Third, clarifying amendments are proposed to the table found in existing N.J.A.C. 14:9-7.5, and a name and heading are added to the table. Finally, existing N.J.A.C. 14:9-7.6 is consolidated with proposed N.J.A.C. 14:9-7.6 (existing N.J.A.C. 14:9-5), and similar clarifying changes are made to this table.

Existing subchapter 9, which provides for PSTACs for wastewater treatment utilities, is deleted and its substance is consolidated with proposed N.J.A.C. 14:9-7.

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SUBCHAPTER 8. COMBINED DOMESTIC WATER AND FIRE

SUPPRESSION SERVICE

Presently, water tariffs filed with the Board do not clearly allow the use of a single water line for both domestic water and fire suppression service. Proposed new subchapter 8 will clearly allow customers to use a single line for both domestic water and fire suppression service. In addition, the proposed new rules require customers to adequately maintain their own water systems to protect against backflow, which is the undesirable reversal of flow of nonpotable water or other substances through a cross-connection and into the piping of a public water system or consumer's potable water system. Backflow into a public water system can pollute or contaminate the water in that system (i.e., backflow into a public water system can make the water in that system unusable or unsafe to drink).

The proposed rules would permit a structure to be served by a single water line that supplies water for both domestic and fire suppression systems. This would help promote the use and installation of fire suppression systems in structures throughout the State, because customers will be able to choose the manner in which they connect their fire protection service to the water main. This means that customers may choose to connect their water systems to the water main through one line or two lines, based on their own evaluation of cost and safety.

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In this proposed rule the Board is concerned with ensuring that New Jersey customers receive safe and adequate water service for both domestic use and fire protection service. It is not the Board's intention to mandate the use of either a single or dual water line. Instead, the Board seeks to clarify its tariff requirements to remove any perceived conflict they may have with regulations promulgated by the Department of Consumer Affairs ("DCA"). The Uniform Fire Code, N.J.A.C. 5:70, promotes the expanded use of fire suppression systems, and the Board is proposing this rule to ensure that customers have the option to utilize either a single or dual water line for both domestic water supply and fire protection support.

The Board's general grant of authority, set forth at N.J.S.A. 48:2-23, charges the Board with ensuring that public utilities "furnish safe, adequate and proper service." However, the DCA has statutory authority, under N.J.S.A. 52:27d-119 et seq., to enforce uniform construction standards. Moreover, DCA regulations such as The Uniform Fire Code, at N.J.A.C. 5:70, and The Uniform Construction Code, at N.J.A.C. 5:23, are focused on ensuring public safety through the promotion of adequate fire protection service. The DCA has determined that a single water line to a structure, providing both domestic water and fire protection, is an acceptable minimum standard. Accordingly, the tariff language in the proposed rule will ensure that Board tariffs do not conflict with DCA regulations which govern construction standards.

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The proposed new rule also places responsibility on customers to ensure that their individual water systems are adequately maintained. This provision is intended to ensure that cross contamination, which is the mixing of clean and unclean water, of the customer's water supply, does not occur. The generic tariff language in the proposed rule requires customers to adequately maintain their own fire suppression systems in order to prevent cross contamination from occurring. As a result, customers will be responsible under proposed N.J.A.C. 14:9-8 for ensuring that their fire suppression system and all necessary devices, as required under the Uniform Construction Code and the Uniform Fire Code, are adequately maintained.

While the legislature has provided the utilities with the right to require separate dedicated service lines for fire protection service, the legislature did not intend that the utilities would do so on an arbitrary or unreasonable basis. In fact, a customer may apply for and receive multi-use service for both domestic water and fire protection service; so long as a Utility cannot show good cause or a compelling reason why the customer should not receive said service. A utility may not show good cause or present a compelling reason why a customer should be prohibited from receiving fire protection service simply by stating a desire to impose a safety standard that is higher than that set out by DCA.

Proposed N.J.A.C. 14:9-8.1, as amended, provides a list of defined terms that are used throughout subchapter 8.

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Proposed N.J.A.C. 14:9-8.2 will require water utilities to file amended tariffs with the Board that comply with this subchapter.

Proposed N.J.A.C. 14:9-8.3 contains language relating to multi-use service which all water utilities will be required to include in their tariffs. More specifically, this section requires water utilities to add specific language to their tariff which states that a customer's multi-use water service may be discontinued for non-payment in accordance with the Board's rules. In addition, the new tariff language will make the customer responsible for hydraulically calculating the demand for their own water system, as well as all costs associated with installing and maintaining their individual water system. Further, the new tariff language will include a disclaimer which will make the customer liable for any damage caused by their own water system, except where the water utility was negligent. Finally, this section states that a utility may not refuse to provide a customer with multi-use service without good cause or a compelling reason.

Proposed new N.J.A.C. 14:9-8.2 would require water utilities to modify their tariffs currently on file with the Board to add the required tariff language, and to include the tariff language in all future tariffs. A corresponding amendment modifies the notification requirements of N.J.A.C. 14:3-7.12(f)ix. Existing N.J.A.C. 14:3-7.12(f)ix requires utilities to notify the insurance company providing fire protection coverage, at least 30 days prior to the discontinuance of

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fire protection service. The proposed amendment would remove the provision which requires utilities to provide this notice to the insurance company. N.J.A.C. 14:3-7.12(f), as amended, would still provide adequate notice of discontinuance of fire protection service to those parties responsible for public safety, such as the fire officials of the municipality, public welfare officials, the mayor and the enforcing housing code official of the municipality in which service is provided, but will reduce the burden on utilities.

SUBCHAPTER 9 CONSUMER CONFIDENCE REPORTS

Existing N.J.A.C. 14:9-10.1(a) (proposed N.J.A.C. 14:9-9.1(a), which requires annual Consumer Confidence Reports pursuant to 40 CFR 141, is being proposed for readoption with amendments which would combine the requirements of existing N.J.A.C. 14:9-9.1(a) and (b). Existing N.J.A.C. 14:9-9.1(b) is proposed for deletion because its substance has been combined into 14:9-9.1(a).

Social Impact

The proposed readoption with amendments and new rules will have a beneficial social impact. They will continue, and enhance, an existing regulatory framework that ensures that New Jersey citizens have access to safe, adequate and proper water and wastewater utility services. Clarifications are proposed throughout the rules which will make the rules easier to understand for both the

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regulated community and the public. The most substantive amendments are proposed to subchapter 6, the Small Water Company And Small Sewer Company Takeover Act rules; and subchapter 8, the Combined Domestic Water And Fire Suppression Service Rules.

The proposed readoption with amendments of the Small Water Company And Small Sewer Company Takeover Act rules at N.J.A.C. 14:9-6 will have a positive social impact in that it will continue and improve procedures for the takeover of small water companies, and will authorize the takeover of small sewer companies, that fail to meet basic requirements for adequate service and protection of public health. No company should be allowed to operate in the water supply or sewerage business unless the company is capable of meeting all of the applicable laws that protect the public from undersupply of water and from water contamination. Therefore, the readoption with amendments will help to eliminate any noncomplying small water and/or sewer companies by arranging for their acquisition by the most suitable public or private entity available, through a fair and efficient process. This will ensure that companies that are unable to meet Federal and State standards will not remain in business and thus will not cause harm to the public health and safety.

Proposed new subchapter 8 will promote the increased use of fire suppression systems in New Jersey. Presently, water tariffs filed with the Board do not clearly allow the use of a single line for both domestic water and fire

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protection service. The proposed amendments will clearly allow customers to use a single line for both domestic water and fire suppression service. Further, these amendments will help ensure the adequacy of the domestic water and fire protection supply, when they are both accessed through a single water line.

These amendments will promote the use of sprinklers, because customers will now clearly understand that they may choose whether to utilize a single or dual line to connect their fire protection service to the water supply. Statistics show that utilization of sprinklers dramatically reduces the risk of fire death and damage.

Economic Impact

This proposed readoption with amendments and new rules will have a minor economic impact on water and wastewater utilities. In complying with the rules, regulated water and wastewater utilities will incur expenses such as equipment maintenance, installation costs, and costs of testing and monitoring, as well as administrative costs. However, the costs incurred by utilities in complying with this chapter are such as would be required to provide an acceptable standard of safe, adequate and proper service. Further, these expenses may, with Board approval, be included in the utilities' rates.

The proposed readoption with amendments of the Small Water Company and Small Sewer Company Takeover Act rules will have a negative economic

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impact on noncomplying small water companies and sewer companies, and will have varying economic impacts on the private or public entities that take over noncomplying systems, and on ratepayers. However, these impacts are an unavoidable byproduct of the protection of public health and safety through enforcing compliance with Federal and State drinking water and environmental standards. Furthermore, during the rate making process, the Board will consider any economic impact on the acquiring entity, caused by the takeover of the noncomplying small water company, noncomplying sewer company, or both. The Board will evaluate and consider these impacts, as well as the possible rate impact on the customers of both the noncomplying system and the acquiring entity, in order to ensure the financial viability of the acquiring entity and to ensure that all customers are provided safe, adequate, and proper service.

The new fire suppression rules at N.J.A.C. 14:9-8 may have a minor negative impact on regulated water utilities and municipalities that currently charge standby fees on water that is supplied to structures via a second water line for the purpose of standby fire protection. Utilities would not be able to collect the standby fee if a customer chose to be served by a single line for both domestic water and fire suppression service. These rules will also have a positive impact on customers because they will now be able to choose to use a single line for multi-use service, which will save them money on installation costs. Further, the lower installation costs for a single line may encourage the use of fire

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suppression systems throughout the state and afford customers with the additional protection that a fire suppression system provides.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:9 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for this proposed readoption with amendments and new rules..

Jobs Impact

It is anticipated that the proposed readoption with amendments and new rules will have a negligible impact on jobs in New Jersey. Most utilities subject to the rules proposed for readoption have already hired the staff necessary to comply with them. Most of the amendments and new rules merely clarify and streamline the existing rules, with the exception of substantive amendments at N.J.A.C. 14:9-6 (Small Water and Small Sewer Company Takeover Act rules) and at N.J.A.C. 14:9-8 (Combined Domestic Water And Fire Suppression Systems).

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The Board anticipates that the proposed readoption with amendments of the Small Water Company and Small Sewer Company Takeover Act rules will not cause jobs to be created or lost in any area of the State's economy. The rules establish a procedure for the takeover of certain small water and small sewer companies. However, such takeovers are not likely to impact the number or type of jobs at the facility or the acquiring entity since most small water and sewer systems have few if any employees, and any jobs eliminated at the small water or sewer company are likely to be offset by additional jobs at acquiring entities.

Although proposed new N.J.A.C. 14:9-8 may slightly increase the number of workers hired to install fire protection systems in new structures, this is not expected to have a significant impact on the total workforce in the State. In addition, it is not anticipated that the utilities will reduce their work force due to the deletion of reporting requirements regarding insurance companies at N.J.A.C. 14:3-13.2, because these reporting requirements are minor.

Agriculture Industry Impact

The proposed readoption with amendments and new rules are likely to have little or no impact on the agriculture industry in New Jersey. While there are some agricultural operations in the State that are large water users, many of these use private wells as their water source. To the extent that agriculture

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operations are utility customers, they would be affected by these rules in the same way as any other water or wastewater customer.

The proposed readoption with amendments of the Small Water Company and Small Sewer Company Takeover Act rules will not have an impact on the agriculture industry of New Jersey because virtually none of the regulated water or sewer companies are operated by or tend to serve primarily the agricultural industry. To the extent that the proposed new Combined Domestic Water and Fire Suppression System rules might affect a few agricultural operations, the effect would be to reduce costs by enabling farmers to use one set of water lines for both domestic water and fire suppression systems.

Regulatory Flexibility Statement

A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. The Board estimates that there are approximately 51 regulated small water and 17 regulated small sewer companies in New Jersey. The proposed readoption with amendments and new rules will impose minimal reporting, record-keeping, and compliance requirements on small businesses. However, the Board has made every effort to ensure that these rules are understandable and can be complied with without the help of outside consultants. In fact, the proposed

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amendments to N.J.A.C. 14:3-7.2 will help reduce the reporting and record-keeping requirements of the utilities.

The small water and sewer companies that might be taken over under the Small Water Company and Small Sewer Company Takeover Act subchapter are small businesses. If the Act is invoked, compliance with the rules would require these companies to incur some costs for record-keeping, and for participating in the legal proceedings required under the rules. However, these costs would result only where the economic or operational viability of a small water company or a small sewer company is called into question. The small companies that would be subject to these rules would already be suffering operational problems of such magnitude that their continued ability to provide safe, adequate and proper service to their customers would be suspect. In fact, the Act is specifically meant to address problems caused by the small size of these companies, where a takeover is necessary for public health and safety. The acquiring entities that would take over the small water and sewer companies under this rule would not be small businesses.

The Board has weighed the impact of this readoption with new rules and amendments on small business and has not included special provisions for small businesses in the rules.

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Smart Growth Impact

The Board anticipates that the proposed readoption with amendments and new rules will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." The proposed readoption with amendments and new rules will apply uniformly Statewide, and will apply almost exclusively to aspects of utility operations that occur after the utility infrastructure is in place. The Board has separate smart growth rules at N.J.A.C. 14:3-8 that apply to the location of water and wastewater infrastructure. Accordingly, the Board does not expect that the rules herein will affect the location of future development. Therefore, the proposed readoption with amendments and new rules will not impact smart growth or the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:9.

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Full text of the rules proposed for repeal may be found in the New Jersey

Administrative Code at N.J.A.C. 14:9-3, 6.9, 7.1, and 8.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 3 ALL UTILITIES

14:3-7.12 Notice of discontinuance

(a)-(e) (No change.)

(f) Each water utility shall: ~~[, on a semiannual basis, make a reasonable effort to solicit information from its fire protection service customers in order to determine the name of the insurance company currently providing insurance protection to the customer and the policy number under which said protection is being provided.]~~

1. At least 30 days prior to the discontinuance of fire protection service, ~~[the water utility providing that service shall]~~ give notice of the discontinuance via certified mail to the following:

i.–vii. (No change.);

viii. The director of county welfare in the county in which the service is provided; **and**

ix. ~~[The insurance company providing fire protection coverage; and]~~

x. (Recodify as ix., no change in text.)

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2. (No change.)

**SUBCHAPTER 13. INTEREST ON DEFERRED BALANCES OF LEVELIZED
ENERGY ADJUSTMENT CLAUSES, LEVELIZED GAS ADJUSTMENT
CLAUSES, PURCHASED WATER ADJUSTMENT CLAUSES AND
PURCHASED WASTEWATER ~~[SEWERAGE]~~ ADJUSTMENT CLAUSES**

14:3-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

.....

"Base cost of purchased sewerage treatment" ~~[means the cost of contractually purchased sewerage treatment as established in the most recent base rate or adjustment clause case of a wastewater utility. Actual cost shall be reflected as cost per 1,000 gallons or cost per 1,000,000 gallons unless otherwise specifically approved by the Board. (See N.J.A.C. 14:9-8.2.))~~ has the same meaning as the term "base cost of purchased wastewater treatment," as defined in N.J.A.C. 14:9-7.2.

"Base cost of purchased water" ~~[means the cost of contractually purchased water as established in the most recent base rate or adjustment clause case of a water~~

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~~utility and collected via the base rates of that water utility. Actual cost shall be reflected as cost per 1,000 gallons or cost per 1,000,000 gallons unless otherwise specifically approved by the Board. (See N.J.A.C. 14:9-7.2.)]~~ **has the same meaning as defined in N.J.A.C. 14:9-7.2.**

~~"Deferred accounting" [treatment] means the deferring on the books and records of a water or wastewater utility the difference between the expense imposed upon it by a water purveyor for purchased water or by a sewerage treatment purveyor for purchased sewerage treatment, and, as effective at the time of the imposition of the expense, the amount of expense approved by the Board for inclusion in rates for recovery of this expense. (See N.J.A.C. 14:9-7.2 and 8.2.)]~~ **has the same meaning as defined in N.J.A.C. 14:9-1.2.**

"Purchased [Sewerage] **Wastewater** Treatment Adjustment Clause" or "PSTAC" [means the methodology by which a sewer utility obtains recognition in its rates of an increase or decrease in the cost of sewerage treatment purchased by it from a sewerage treatment purveyor (see N.J.A.C. 14:9-8.2); or its successor clause] **has the same meaning as the term "purchased wastewater treatment adjustment clause," as defined in N.J.A.C. 14:9-7.2.**

"Purchased Water Adjustment Clause" or "PWAC" shall have the same meaning as defined in N.J.A.C. 14:9-7.2.

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CHAPTER 9 WATER AND WASTEWATER

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14:9-1.1 Scope

(a) **This chapter shall apply to any water utility or wastewater utility, as defined at N.J.A.C. 14:9-2, which constructs, operates and/or maintains plant and/or service connections for providing water and/or wastewater service.**

(b) **In addition to complying with this chapter, each water and/or wastewater utility described at (a) above shall also comply with the applicable provisions of the Board's rules for all utilities at N.J.A.C. 14:3.**

14:9-1.2 Definitions

For the purposes of this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

Additional definitions that apply to this chapter can be found at N.J.A.C.

14:3-1.1.

“Board” means the New Jersey Board of Public Utilities.

“NJDEP” means the New Jersey Department of Environmental Protection.

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“Wastewater utility” means an investor owned public utility, as defined at N.J.S.A. 48:2-13, that provides wastewater treatment service, or a municipal public utility that provides wastewater treatment service to more than 1,000 connections in another municipality.

“Water purveyor” means a public water utility or municipal water utility which delivers water, subject to the terms of a bulk contract, to customers.

“Water utility” means an investor owned public utility that provides water service, or a municipal public utility that provides water service to more than 1,000 connections in another municipality.

SUBCHAPTER [1.] 2. PLANT

14:9-[1]2.1 Plant construction

(a) **All water and wastewater utilities shall ensure that the** [The] construction and installation of **their** plant and facilities [of sewer and water utilities must be in accordance] **comply** with N.J.A.C. 14:3-2.1, Plant construction, and [,] in addition [, must be in accordance with standard specifications as set forth] **complies with the applicable provisions of Water Meters: Selection, Installation, Testing, and Maintenance (M6), 1999 Edition, published** by the American Water Works

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Association, **amended and supplemented , which is incorporated herein by reference, and is available at**

<http://www.awwa.org/bookstore/product.cfm?id=30006>.

[and the rules of the New Jersey Department of Environmental Protection, as applicable. When and if any controversy arises as to the necessity for adopting specifications calling for construction of a higher standard, the matter may be referred to the Board for determination.]

14:9-[1.2]2.2 Inspection of property

(a) Each water and wastewater utility shall inspect each valve in the utility's system ~~[periodically]~~ in accordance with the schedule in (b) below, to determine ~~[its accessibility for operation]~~ how easy or difficult it is to reach the valve to operate it, and [its] the valve's operating condition.

(b) ~~[Large valves, 12-inch and over, shall be inspected]~~ **Each water or wastewater utility shall inspect each valve that is 12 or more inches in diameter at least** once every two years, and shall inspect all other valves at least once every four years.

(c) At a minimum, [this] each valve inspection shall include:

1. The clearing of the ~~[access]~~ area around the valve so as to ensure full access to the valve for operating purposes;

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2. The cleaning out of the valve ~~[box]~~; and
3. The dynamic testing of the valve, by opening and then closing the valve for either of the following number of turns:
 - i. (no change); or
 - ii. That number of turns which constitutes 5 15 percent of the total number of turns necessary to completely open or completely close the valve [per manufacturer's design].

~~[(b)]~~ (d) Each water utility shall, once a year, test every hydrant in its system in order to determine [its] the hydrant's working condition.

~~(e)~~ [The] In addition to the testing required under (d) above, each water utility shall [also] formulate and [put into practice] implement a [comprehensive and definite] plan for flushing [hydrants and dead ends of mains] every hydrant in the utility's system, and every dead end of a main in the utility's system. This plan for flushing may be combined with the [periodical] periodic testing of hydrants required under (d) above.

~~[(c) A]~~ (f) Each water and wastewater utility shall keep a record of all inspections [and], tests and flushings [shall be kept] for a period of [not less than] at least five years.

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(g) All water and wastewater utilities shall comply with the applicable provisions of N.J.A.C. 14:3-2.5.

SUBCHAPTER ~~[2.]~~3. QUALITY OF SERVICE

14:9-~~[2.1]~~3.1 Pressure and volume of water [service]

(a) Each water utility shall [supply] ensure that it provides water [service] at adequate pressure and volume [to the curb, or]. For the purposes of this section, the pressure and volume of water shall be measured at the curb of the property being served, or if there is no curb, at the point of connection with the customer's service line.

(b) Each water utility shall maintain sufficient pressure and volume of water at all fire hydrants to assure adequate streams for the fighting of fires.

14:9-~~[2.2]~~3.2 Quality of water

(a) Each water utility shall furnish water that is free of excess impurities [or] and sedimentation and shall make every effort to assure that its product is potable and uncolored, in accordance with the requirements in the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10. Noncompliance with this requirement shall constitute failure to provide safe, adequate and proper service.

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(b) ~~[Water utilities subject to regulation by the Board]~~ If a water utility provides water that does not comply with all applicable Federal and State laws, rules, standards, and guidelines, the water utility shall [inform] so notify the Board within 48 hours. [of all instances where the quality of the water does not conform to all applicable Federal and State laws, rules, standards, or guidelines].

(c) The water utility shall provide the notice required under (b) above to the Board as soon as the water utility becomes aware of the noncompliance, and in no case shall the notice be provided any later than 48 hours after the noncompliance began.

14:9-[2.3]3.3 [Sewerage treatment] Wastewater service

(a) Each wastewater utility shall provide wastewater treatment service in such a manner as to prevent escape of offensive odors, the overflow of effluent and the discharge of any untreated sewage, in accordance with NJDEP requirements at N.J.A.C. 7:10A. Noncompliance with this requirement shall constitute a failure to provide safe, adequate and proper service.

(b) Each [such] wastewater utility shall operate its facilities in such a manner as to eliminate possible danger to public health and welfare.

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[14:9-2.4 (Reserved)]

SUBCHAPTER ~~[3.]~~ 4. METERS

14:9-~~[3]~~4.1 [Testing of water meters] Water meter testing

~~[Each utility having more than 100 meters in use shall provide and maintain suitable and adequate facilities for testing its water service meters, including complete testing equipment of a form approved by the Board. Utilities may cooperate in arranging for such facilities. No equipment shall be used in testing meters unless it shall have been examined, calibrated and sealed by the New Jersey Office of Weights and Measures at least once every five years. Appropriate evidence of such examination, calibration and sealing shall be affixed to the equipment.]~~

14:9-3.2 Periodic testing of water meters

~~(a) Unless otherwise authorized by the Board, no utility furnishing metered water service shall allow a meter to remain in service for a period longer, or for a registration greater, than that specified in the table below without checking it for accuracy and readjusting it if found to be incorrect beyond the limits established in N.J.A.C. 14:9-3.3:~~

- ~~1. 5/8 inch meter, ten years or 750,000 gallons;~~
- ~~2. 3/4 inch meter, eight years or 1,000,000 gallons;~~
- ~~3. One inch meter, six years or 2,000,000 gallons;~~

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~~4. All meters above one inch, four years.]~~

(a) Each water utility shall ensure that all of the meters in use in its system are tested for accuracy in accordance with this section.

(b) A water utility shall ensure that each meter is tested after a certain number of years in use, or after a certain number of gallons measured, whichever comes first, according to the schedule in Table A below:

TABLE A

Frequency for water utility testing of water meters

| <u>Meter size</u> | <u>Whichever comes first:</u> |
|------------------------------|---|
| <u>5/8 inch</u> | <u>10 years or 750,000 gallons</u> |
| <u>3/4 inch</u> | <u>Eight years or 1,000,000 gallons</u> |
| <u>One inch</u> | <u>Six years or 2,000,000 gallons</u> |
| <u>Greater than one inch</u> | <u>Four Years – no gallon limit</u> |

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[14:9-3.3 Determination of Water Meter Accuracy

~~(a) A water meter shall be considered correct if, when flowing water]~~

(c) A water meter shall be tested, with water flowing at both intermediate and full flow capacities, as set forth in **Water Meters: Selection, Installation, Testing, and Maintenance (M6), which is published by** the American Water Works Association [M-6 Manual, it shows an error which is not greater than one and one half percent] **, as amended and supplemented, which is incorporated herein by reference and may be found at <http://www.awwa.org>.**

(d) A water meter shall be considered accurate if **it shows an error no greater than one and one half percent, when tested in accordance with this section.**

~~[(b) An error at any flow capacity in excess of one and one half percent shall be subject to an adjustment of charges as defined in N.J.A.C. 14:3-4.7.]~~

14:9-4.2 Water meter testing equipment

(a) Each water utility that has more than 100 meters in use shall ensure that it has access to facilities that are adequate for testing all of its water meters as required by N.J.A.C. 14:3-4.4 [under this subchapter, including test equipment approved by the Board]

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(b) Water utilities may cooperate with other water utilities in arranging for access to meter testing facilities.

(c) No equipment shall be used in testing water meters unless it has been examined, calibrated and sealed by the New Jersey Office of Weights and Measures at least once in the five years prior to its use in testing. Appropriate evidence of such examination, calibration and sealing shall be affixed to the equipment.

14:9-5.1 Adoption by reference of rules concerning preservation of records

~~(a) [The Board of Public Utilities adopts]~~ Each water and wastewater utility shall keep records as required by the National Association of Regulatory Utility Commissioners' (NARUC) 1985 "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities," incorporated herein by reference, as amended or supplemented, and available from the National Association of Regulatory Utility Commissioners, 1101 Vermont Avenue NW, Washington, D.C. 20005, or at www.naruc.org. ~~[, as its rules governing the preservation and destruction of records for all classes of water utilities subject to its jurisdiction and as a supplement to its uniform system of accounts for all classes of water utilities.]~~

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(b) [Other rules or Orders of this] If the Board issues an order providing for a
longer or shorter retention period[s] for specific records [will] , the order shall
supersede the NARUC regulations.

~~[(c) This subchapter and the NARUC regulations applicable to water utilities shall
also apply to wastewater utilities.]~~

~~(d) Copies of the full text of the NARUC regulations are available for examination
at the Board's Offices at Two Gateway Center, Newark, New Jersey 07102.
Additional copies of the NARUC regulations may be purchased from the National
Association of Regulatory Utility Commissioners, 1101 Vermont Avenue NW,
Washington, D.C. 20005.]~~

SUBCHAPTER 6. SMALL WATER COMPANY AND SMALL SEWER COMPANY TAKEOVER ACT [REGULATIONS] Rules

14:9-6.1 Purpose

This subchapter implements the provisions of N.J.S.A. 58:11-59 et seq.,
commonly known as the “Small Water Company and Small Sewer Company
Takeover Act.” This subchapter establishes procedures by which a small water
company or small sewer company that does not comply with [appropriate]
applicable statutory and regulatory standards concerning [actual or imminent
public health problems] the availability and quality of potable water or the

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discharge of treated sewage to the State's waters may be acquired or "taken over" by a public or private entity pursuant to a joint order issued by the New Jersey Department of Environmental Protection and the New Jersey Board of Public Utilities.

14:9-6.2 Definitions

Unless the context clearly indicates otherwise, the following terms, when used in this subchapter, shall have the following meanings[:]. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:9-1.2, and in the Board's rules for all utilities at N.J.A.C. 14:3-1.1 .

"Acquisition cost" means the cost to an acquiring entity of completing the transaction required to take over a small water and/or small sewer company through the process set forth in this subchapter. This term includes the actual purchase price of the small water and/or sewer company, as determined through negotiations under N.J.A.C. 14:9-6.11, or through eminent domain proceedings. The Board shall make the final decision as to what activities are necessary to complete the transaction and thus what constitutes acquisition costs in a particular case.

"Act" means the "Small Water Company and Small Sewer Company Takeover Act," N.J.S.A. 58:11-59 et seq., as amended.

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["Actual or imminent public health problems" means any violations by a small water company of appropriate] "Actionable violation" means:

- (1) For a small water company, an uncorrected violation of applicable
statutory ~~and~~ or regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10 [-1 through 13], which adversely affects the quality, pressure or volume of water delivered, as determined by the Department. Violations by a small water company or small sewer company of [appropriate] applicable statutory and regulatory standards that do not affect the quality, pressure or volume of water delivered as determined by the Department, in consultation with the Board, shall not be considered actual or imminent public health problems for the purposes of this subchapter, including, but not limited to, aesthetic water quality problems or minor design deficiencies; and
- (2) For a small sewer company, any uncorrected violation that the New Jersey Department of Environmental Protection determines is a "serious violation," or that causes the company to be a "significant noncomplier," as those terms are defined in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and implementing rules.

[BPU] "Board" means the New Jersey Board of Public Utilities.

"Capable" means financially and operationally able to provide safe, adequate and proper water service for the existing and foreseeable customers of the small

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water company or safe, adequate and proper sewer service for the existing and foreseeable customers of the small sewer company in compliance with environmental standards [to be acquired currently or in the foreseeable future. BPU shall be consulted by the] The Department shall consult with Board staff concerning the financial status of any potential acquiring [any] public or private [water systems' financial status] entity.

"Commissioner" means the Commissioner of the Department of Environmental Protection or [his/her] a designated representative.

"Department" means the Department of Environmental Protection.

~~["Division" means the Division of Water Resources of the Department of Environmental Protection.]~~

"Improvement cost" means a cost expended in order to correct an actionable violation at a small water company and/or small sewer company.

"Party to the proceedings" or "party" means a noncomplying small water company and/or small sewer company; a potential acquiring public or private entity or entities; and the Public Advocate.

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"Proximate" means [and includes] all [public or] private water or sewer companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. and doing business in the region, and municipalities or [any] other suitable governmental entities[, located in the jurisdiction] wherein the small water company or small sewer company provides service, regardless of their ability to reasonably physically interconnect with the small water company or small sewer company to be acquired.

"Public Advocate" means the Department of the Public Advocate.

"Small sewer company" means any company, business, or entity, other than a governmental agency, which is a public utility as defined pursuant to N.J.S.A. 48:2-13, that collects, stores, conveys, or treats wastewater, and that regularly serves fewer than 1,000 customer connections.

"Small water company" means any company, purveyor or entity, other than a governmental agency, which is a public utility as defined pursuant to N.J.S.A. 48:2-13, that provides water for human consumption and which regularly serves less than 1,000 customer connections.

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14:9-6.4 Applicability

This subchapter shall apply to all small water companies and small sewer companies, as those terms are defined at N.J.A.C. 14:9-6.2, [within the State of] in New Jersey.

14:9-6.6 Scope

(a) Any small water company or small sewer company, determined by the Department to have committed an actionable violation, as defined at N.J.A.C. 14:9-6.2, [not in compliance with appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, concerning actual or imminent public health problems as determined by the Department may] shall be subject to [the provisions of] this subchapter.

~~[(b) Violations by a small water company of appropriate statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter.]~~

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(b) For the purposes of this subchapter, the Department, after consultation with Board staff, shall determine options for improvements to correct actionable violations.

(c) For the purposes of this subchapter, Board staff, after consultation with the Department, shall determine improvement costs, acquisition costs, and the distribution of costs through the takeover procedures set forth in this subchapter and through rate making.

14:9-6.7 Departmental and Board actions

(a) Prior to the implementation of procedures under the Act, the Department shall actively pursue appropriate and available enforcement options to [bring] cause a small water company [~~into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems~~] or small sewer company to cease all actionable violations, including, but not limited to:

1. Issuance of [~~directive letters~~] notices of violation;
2. Issuance of administrative orders;
3. - 5. (No change.)

(b) [A Departmental] An unstayed Department order issued [on a case-by-case basis] to a small water company or small sewer company, concerning an actionable violation, [~~the availability of water, the potability of water and the~~

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~~provision of water at adequate volume and pressure~~ may initiate the] shall
constitute a basis upon which the Department and the Board may initiate
proceedings under the Act and this subchapter [by the Department.] as follows:

1. A [Departmental] Department order shall specify on a case-by-case basis
a reasonable time period in which the small water company or small sewer
company must ~~[comply with the appropriate statutory and regulatory~~
~~standards concerning actual or imminent public health problems as~~
~~determined by the Department and shall provide the public health~~
~~problems as determined by the Department]~~ correct and eliminate the
actionable violation(s), and shall provide the small water company or small
sewer company with the opportunity for an evidentiary hearing pursuant to
N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F et seq. to determine
whether there has been compliance with appropriate statutory and
regulatory standards [.] ;
2. If administrative hearing procedures have been initiated by a small water
company or small sewer company concerning any outstanding
[Departmental] Department order, the Department [shall] may move to join
any new order issued with the ongoing administrative hearing procedures
[.] ; and
3. The Department may issue another order concerning any small water
company or small sewer company ~~[if the outstanding Departmental order~~
~~remains over one year old or administrative hearing procedures have~~
~~commenced]~~ at any time.

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(c) Should the Department conclude, following the expiration of the times for compliance set forth in Department orders, or following an evidentiary hearing if one has been requested, that the small water company or small sewer company has not complied with the Department's order and no stay has been obtained, the ~~[Department may invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.~~

1. ~~The~~] Department shall provide [the] [BPU] Board staff with immediate notice of the small water company's or small sewer company noncompliance and the [decision] Department and Board shall jointly decide whether to invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8 and N.J.A.C. 14:9-6.8.

(d) If a small water company and a small sewer company serve a common franchise area, were established by the same developer to serve the franchise, and are under common control or ownership, the companies may be treated as one company for purposes of a takeover proceeding under this subchapter, provided that any acquisition payments made by the acquiring public or private entity shall be separately allocated and made available to the creditors and claimants of each company in accordance with N.J.S.A. 59:11-60(c).

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14:9-6.8 Joint public hearing

(a) Designated hearing officers from the Department and [BPU] **the Board**, or an Administrative Law Judge, shall conduct a non-adversarial joint [informational] public hearing in the [proximate] area of the non-complying small water company or small sewer company, preferably in the evening, [concerning the non-complying small water company] after [30 days] providing notice pursuant to (b) below.

(b) Notice of the time, place and subject matter of the joint public hearing shall be given at least 30 days prior to the scheduled hearing date by the Department and [BPU] Board staff as follows:

1. Publication of a display advertisement in a newspaper circulating within the proximate area of the small water company or small sewer company for a minimum of one day per week for two weeks prior to the scheduled date of the joint public hearing;
2. (No change.)
3. Written notice by certified or registered mail sent to the following [parties]:
 - i. The non[-]complying small water company or small sewer company, and, if known, the company's owner or operator;
 - ii. (no change)
 - iii. Capable proximate [public and] private water companies or sewer companies; and

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- iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq.[,] and doing business in the region, and municipalities[, and any] or other [suitable] capable proximate governmental entities located in the jurisdiction wherein the non-complying small water company provides water or sewer service.

(c) The joint public hearing shall be conducted to receive public comments regarding the possible options available to bring the non-complying small water company or small sewer company into compliance with the [appropriate] applicable statutory and regulatory standards [~~concerning actual or imminent public health problems~~]. The acquisition of the non-complying small water company and/or small sewer company by the most suitable public or private entity shall be discussed. [If information should be required from participants at the joint public hearing]

(d) [Information should be required from participants at the joint public hearing]
The hearing officer at the joint hearing may require parties to the proceedings, as defined at N.J.A.C. 14:9-6.2, to testify concerning [any estimates of]
expenditures, including acquisition and improvement costs, as those terms are defined at N.J.A.C. 14:9-6.2, that may be required to correct all actionable
violations, including but not limited to costs necessary to:

1. (No change)
2. Assure the potability of water; [and]

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3. Assure the provision of water at adequate volume and pressure[.]; and
4. For small sewer companies, assure the provision of adequate sewer service in compliance with Federal and State water pollution control requirements.

~~[(d)]~~ (e) The Department shall [make], after consultation with Board staff, develop a [technical] presentation [at] for the joint public hearing ~~[of the non-complying small water company's deficiencies, indicate necessary improvements and discuss, after consultation with BPU, possible options and preliminary improvement costs].~~ This presentation shall:

1. Indicate various options for correcting actionable violations;
2. Identify the improvements to the small water company and/or small sewer company, which would be needed under each option; and
3. [1. The Department's presentation shall be] Be based on the information in the record and any other information [reasonably] available to the Department [and be intended to focus attention on the relevant issues concerning the non-complying small water company].

[2.] (f) [Written] The Department shall mail written summaries of the Department's presentation [required by (d) above shall be mailed] to the [parties] persons set forth in [(a)] (b)3 above at least five days before the scheduled joint public hearing date. [3.] Copies of the written summaries [required by (d)2 above] shall also be made available [to other interested persons] at the joint public hearing.

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(g) Board staff shall, after consultation with the Department, develop a presentation for the joint public hearing. This presentation shall:

1. Include a preliminary estimate, for each option in the Department's presentation, of the amount of the improvement costs expected to be borne by the customers of the acquiring entity, as well as the customers of the small water company and/or small sewer company;
2. Include a preliminary estimate of the acquisition costs for each option in the Department's presentation;
3. Include a preliminary estimate, for each option in the Department's presentation, of the amount of the acquisition costs expected to be borne by the customers of the acquiring entity, as well as the customers of the small water company and/or small sewer company; and
4. Be based on the information in the record and any other information available to Board staff.

[(e)] (h) The non[-]complying small water company and/or small sewer company shall [be ordered to] appear at the joint public hearing and shall provide all available information pertaining to the value of its water supply facilities or sewer facilities, and pertaining to the cost of correcting [deficiencies] all actionable violations.

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(i) At the joint public hearing, the Department shall, to the extent possible, describe the terms of a draft administrative consent order (ACO), developed jointly with Board staff. The draft joint ACO shall contain a schedule for the acquiring entity to make all necessary improvements to correct the actionable violations.

1. (j) The draft joint ACO may contain a stipulation insulating the acquiring entity from liability for penalties arising from the deficiencies, obsolescence or disrepair of the facilities at the time of acquisition. Such a stipulation shall be conditioned on the acquiring entity's compliance with the schedule in the ACO

(k) The acquiring entity shall not be liable for penalties for violations that occurred prior to the acquisition.

~~[(f) Public comments shall be solicited at the joint public hearing and]~~

(l) The public hearing shall be transcribed for the record at the expense of the non[-] complying small water company and/or small sewer company.

[(g)] (m) The designated Department and [BPU] Board hearing officers, or an Administrative Law Judge, shall require answers from any appropriate person attending the joint public hearing, [if possible] to all reasonable questions put forward [at the joint public hearing].

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~~[(h)]~~ (n) Cross-examination shall not be permitted by any [interested parties] person at the joint public hearing , except for the hearing officer(s).

~~[(i) All participants at the joint public hearing shall be afforded the opportunity to testify under oath.]~~

(o) All testimony from the parties to the proceedings shall be given under oath.
In addition, the hearing officer may require any other person to testify under oath.

(p) Following the joint public hearing, the Department and the Board shall keep the record open for at least fifteen days to allow any person to submit written comments.

14:9-6.9 Joint public hearing report

~~[(j)]~~ (a) Within 60 days after the joint public hearing [held pursuant to this section] record is closed, the designated Department and [BPU] Board hearing officers or an Administrative Law Judge shall review the record and prepare a joint public hearing report [detailing no more than three options and their] . The joint report shall provide a maximum of three options, and shall detail the following information for each:

1. The estimated costs of each option [,including the] ;

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2. The potential impact on the customers of the acquiring entity, and the customers of the small water company and/or small sewer company;

3. The rationale for selection of each option ; and

4. A ranking of the options in order of priority [~~for utilization by the Department and the BPU in selecting an option~~].

[(k)] (b) The joint public hearing report [required by (j) above] shall be mailed to all those noticed by certified or registered mail of the joint public hearing in accordance with N.J.A.C. 14:9-6.8(b)3, and shall be made available for public review through posting on the Department's and the Board's website <http://www.bpu.state.nj.us/home/home.shtml>. The Department and Board staff shall undertake reasonable efforts to make copies of the joint report available to all other interested persons.

[1.] (c) All [interested] persons shall [be allowed to] file any comments concerning the report within 30 days of its issuance, by certified or electronic mail to the address supplied in the joint report.

[i] (d) Failure to file any comments concerning the joint report by the small water company or small sewer company, by its owner or operator, by capable proximate public or private water companies [or], by municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1, by capable proximate municipalities, by [or] any other [suitable] capable proximate governmental entities,[wherein the

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non-complying small water company provides service] or by any interested person, shall [create a rebuttable presumption that no objections to the joint report exist] be deemed a waiver of any right to raise any legal or factual issue which could have been reasonably ascertained from the joint report.

(e) The filing of a timely comment or objection shall not, in itself, confer on the objecting person a right to a contested case hearing, or the right to intervene in any contested case hearing.

~~[2. If the joint report required by (j) above recommends acquisition as an option, the Department and BPU may forward a copy of the joint report to the Office of Administrative Law to provide notice that the Department and BPU may request the services of an administrative law judge on an expedited scheduling basis to conduct the contested case hearing required by N.J.A.C. 7:19-5.9.~~

~~14:9-6.9 Contested case~~

~~(a) A contested case hearing(s) shall be held before the Commissioner, the BPU Commissioner, or an Administrative Law Judge concerning the non-complying small water company to determine through a fact-finding adversarial hearing the expenditures that may be necessary to make improvements necessary to the non-complying small water company to insure compliance with the appropriate statutory and regulatory standards concerning actual or potential public health problems. Also to be considered at this contested case hearing(s) shall be the~~

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~~issue of acquisition costs and the most suitable public or private entity to acquire the non-complying small water company.~~

~~(b) At the contested case hearing(s) opportunity shall be afforded the parties to respond, appear and present evidence and argument on all issues involved pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1.~~

~~(c) The entire record addressed pursuant to this subchapter shall be considered by the Commissioner, Board Commissioner or Administrative Law Judge in deciding the issues set forth in (a) above. All portions of this record considered admissible pursuant to the "New Jersey Uniform Administrative Procedures Rules of Practice", N.J.A.C. 1:1, shall be exhibits in the contested case hearing.~~

~~(d) In addition to any notice requirements required pursuant to (b) above, notice of time, place and subject matter of the contested case hearing shall be given by certified or registered mail to the following parties:~~

- ~~1. The non-complying small water company;~~
- ~~2. The Public Advocate;~~
- ~~3. Capable proximate public and private water companies; and~~
- ~~4. Capable proximate municipalities, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. and any other suitable~~

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~~governmental entities wherein the small water company provides water service.~~

~~(e) The contested case hearing(s) shall be transcribed for the record at the expense of the non-complying small water company.]~~

14:9-6.10 [Joint] Proposed joint takeover order [by the Department and BPU]

(a) Upon receipt of the entire record of the joint public hearing [and the contested case hearing(s)] , the joint hearing report, and any written comments on the report received during the comment period required under N.J.A.C. 14:9-6.8(o), the Department and the Board shall jointly [determine in a written] issue a proposed order [the appropriate actions to be taken on the basis of the entire record. If the acquisition option is not selected, then] , which shall require either the acquisition of the small water and/or sewer company, or termination of procedures under the Act [terminate].

(b) If the Board and the Department do not order the acquisition of the small water and/or sewer company, they shall order the termination of procedures under the Act.

~~[(b)] (c) If the Department and the Board [have determined] find that the [costs of improvements to and the acquisition of the non-complying small water company]~~

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improvement and acquisition costs, as defined at N.J.A.C. 14:9-6.2, are
necessary and reasonable, the Department and the Board shall [jointly] issue a
proposed joint takeover order for the acquisition of the non[-] complying small
water company and/or small sewer company by the most suitable entity. [3. This
order shall include]

(d) The proposed joint takeover order shall:

1. Designate an acquiring entity;
2. Address improvement and acquisition costs;
3. This Order shall Include an action by the Board subject to refund which
provides, upon the order becoming final, for the [immediate] inclusion in
the acquiring entity's rates of the [acquiring entity of the] anticipated costs
of [necessary] improvements [, or, if] required under N.J.A.C. 14:9-6.13(a).
This inclusion shall be accomplished immediately or, if the acquiring
entity chooses to defer determination of acquisition costs [has been
deferred], it shall be accomplished as soon [as possible thereafter] after
these costs are determined as [may be] **is** practicable and feasible
consistent with N.J.A.C. [7:19-5.11] 14:9-6.11; and
5. [The order shall also include] Include [the approved] tariffs approved by
the Board under N.J.A.C. 14:1-5.

[(c)] (e) If the Board has determined that customers shall pay for some or all of
the anticipated improvement costs [are customer provided, the] , the proposed

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joint takeover order shall require that improvements [shall] be considered contributions in aid of construction (CIAC) in all future rate cases. Separate records shall be maintained as to contributions occurring under this process.

[(d)] (f) [The BPU shall extend or transfer] If the Department and the Board issue a proposed joint takeover order, the Board may, if necessary, issue an order:

1. Extending or transferring the franchise area of the acquiring [public or private] entity [to the extent necessary] to cover the service area of the non[-]complying small water company [taken over pursuant to the Act and this subchapter] and/or small sewer company;
2. Revoking any service franchise previously issued by the Board to the small water company and/or small sewer company; and
3. Rendering the owner or operator of the company or companies presumptively unfit to hold any other water or sewer franchise, or municipal consent to provide water or sewer service.

[(e)] (g) If this joint order results in an increase in the rates, this process shall be considered a proceeding initiated by the application of a utility for an increase in rates for the purposes of N.J.S.A. [52:27E-19] 52:27EE-48.

~~[(f) Any acquisition costs which are deemed necessary and reasonable, based on evidence from contested case hearing(s), and agreed to by the small water~~

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~~company and the acquiring entity and approved by BPU, after consultation with the Department and the Public Advocate, may be included in the rates.]~~

(h) Board staff shall serve the proposed joint takeover order by personal service or certified mail upon the following:

1. The noncomplying small water company and/or small sewer company;
2. The owner and operator of the noncomplying small water company and/or small sewer company, if different from (h)1 above;
3. The acquiring public or private entity; and
4. The Public Advocate.

(i) The Department and Board staff shall mail the proposed joint takeover order or otherwise make it available to all persons who testified or submitted written information at the joint public hearing, or who submitted timely written comments on the joint hearing report.

14:9-6.11 Acquisition costs

(a) If the [parties] small water company and/or small sewer company have not agreed with the acquiring entity as to acquisition costs or other matters relevant to the takeover proceedings, the Board's and the Department's designated representatives shall convene at least one meeting within 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. [7:19-5.9(ji)] 14:9-6.8(j).
~~[and again within 15 days after issuance of the joint order prepared pursuant to~~

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N.J.A.C. 7:19-5.10]. If all matters are not resolved at this meeting, another meeting shall be held within 15 days after issuance of the proposed joint takeover order.

(b) The meetings required under (a) above shall address issues that must be resolved in order to complete the takeover proceedings required under this subchapter.

(c) Representatives of the Public Advocate, non-complying small water company and/or small sewer company, and the acquiring entity shall be notified of each meeting [which will concern the possibility of mutual agreement on compensation for the acquisition and the other details pertaining to takeover of the non-complying small water company by the acquiring entity.]

(d) Meetings shall be continued if the Department and [BPU] Board staff determine in writing that a reasonable possibility of success for an agreement exists.

(e) The [BPU] Board's and the [Departmental] Department's representatives shall certify in writing to the Department and [BPU] the Board the status of these meetings every three months.

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~~[(b) If no agreement between parties exist, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1.]~~

(f) An agreement between the acquiring entity and the small water company and/or small sewer company on acquisition costs shall not be final unless the Board and the Department approve the agreement.

(g) If the acquiring entity and the small water company and/or small sewer company do not come to an agreement on acquisition costs, or if the entities agree but the Board does not approve the acquisition costs, the purchase price for the small water company and/or small sewer company shall be determined through the use of eminent domain by the appropriate agency or agencies, in accordance with N.J.S.A. 20:3-1 et seq. The acquiring entity shall provide notice of the commencement of these proceedings to the Board, the Department, and all affected persons.

(g) If the parties to the proceedings reach an agreement on acquisition costs, which the Board approves, the Board and the Department shall continue proceedings under the Act in accordance with this subchapter.

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(h) The proposed joint takeover order shall provide that any acquisition costs that Board staff, after consultation with the Department and the Public Advocate, determines are necessary and reasonable may be included in the acquiring entity's rates, provided that the small water company and/or small sewer company agree. The Board staff's determination under this subsection shall be based on evidence from the joint public hearing and comments on the joint hearing report.

14:9-6.12 Contested case hearing, final joint takeover order and administrative consent order (ACO)

(a) Any of the parties to the proceedings may request a contested case hearing on the proposed joint takeover order through the procedures at N.J.A.C. 7:19-5.11 or through the procedures for filing a petition at N.J.A.C. 14:1-5.

(b) A party to the proceedings shall submit any request for a contested case hearing to the Board or the Department within 30 days after the party receives the proposed joint takeover order.

(c) Board staff, in consultation with the Department, may deny a request for a contested case hearing, whether by a party to the proceedings or another person, if the hearing request:

1. Is not filed within the applicable deadline in this section;
2. Does not meet the requirements at N.J.A.C. 7:19-5.11 and 14:1-5;

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3. Does not specify one or more genuine issues of material fact or law that are appropriately and necessarily resolved by an adversarial, adjudicative hearing; or
4. Is based on factual or legal issues that were reasonably ascertainable from the joint hearing report, but were not raised during the comment period provided under N.J.A.C. 14:9-6.8(o) and (p).

(d) Status as a ratepayer or customer of the noncomplying small water company and/or small sewer company shall not, in itself, confer a right to a hearing apart from the right of the Public Advocate. Even if the hearing request of an interested person is denied, the person may nevertheless apply to intervene or participate in a contested case requested by someone else, in accordance with N.J.A.C. 1:1-16.

(e) If no party to the proceedings submits a hearing request within the applicable time limit in (b) above, the proposed joint takeover order shall become a final order on the 31st day after service upon all the parties to the proceedings of the proposed joint order, and the Department shall, with the concurrence of the Board, finalize the joint administrative consent order (ACO).

(f) If a contested case hearing is granted, Board staff shall notify all parties to proceeding and all these parties shall be entitled to participate fully at the hearing with respect to the issues specified in the grant of the hearing.

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(g) If a contested case hearing is granted, the hearing shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and shall be held before one of the following, as determined jointly by the Board and DEP:

1. The DEP Commissioner or a designee;
2. A Board Commissioner or a designee; or
3. An Administrative Law Judge.

(h) If one or more timely hearing requests is submitted, the proposed joint takeover order shall become a final order upon the earliest of the following:

1. Denial of all hearing requests in accordance with this section;
2. If a hearing request is granted, the abandonment or termination of the contested case hearing at any time prior to a final decision by the Department and the Board; or
3. If a hearing request is granted, and if the contested case hearing is conducted and completed, the issuance of a final decision by the Department and the Board.

(i) After the joint takeover order becomes final under (h) above, the Department and *** the Board *** shall serve the final joint takeover order, together with any contested case hearing final decision, upon each of the parties to the proceeding by personal service or certified mail.

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(j) The Department and ***the Board *** shall also mail or otherwise make available the final joint takeover order to all persons who:

1. Testified at the joint hearing;
2. Submitted comments on the joint hearing report in accordance with N.J.A.C. 14:9-6.8(o);
3. Submitted a request for a contested case hearing; or
4. Requested permission to intervene or participate in a contested case hearing.

[14:9-[6.12] 6.13 Compliance with joint order

(a) The acquiring entity [which receives a] named in a final joint takeover order [pursuant to N.J.A.C. 7:19-5.10] issued under this subchapter shall acquire the non[-]complying small water company and/or small sewer company, and shall make necessary improvements to assure, in the case of a small water company, the availability of water, the potability of water and the provision of water at adequate volume and pressure [as mandated by N.J.S.A. 58:11-62.] ; and, in the case of a small sewer company, full compliance with applicable Federal and State water pollution control requirements.

(b) The non[-]complying small water company and/or small sewer company shall immediately comply with the final joint takeover order and shall facilitate [its] the

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sale of the company to the designated acquiring entity as mandated by N.J.S.A. 58:11-62.

~~[(c) The failure of any utility to comply with a joint order pursuant to N.J.A.C. 7:19-5.10 shall permit the BPU and the Department to proceed to enforce the joint order consistent with their statutory mandate.]~~

14:9-[6.13] 14:9-6.14 Differential rate for customers of small water company or small sewer company [for use of service of acquiring entity's system or facilities]

[If the joint order pursuant to N.J.A.C. 7:19-5.10 has been issued, BPU] The Board may, in its discretion, allow the acquiring entity to [charge and] collect [a differential rate] from the customers of the non-complying small water and/or small sewer company, a different rate for the use [of] or service of the acquiring entity's [water supply system or] facilities than the rate the acquiring entity charges to the customers it served prior to the takeover, pursuant to N.J.S.A.

58:11-63.

14:9-6.15 Liability for hazardous substance discharges

An entity that acquires the facilities of a small water company and/or a small sewer company pursuant to a final joint takeover order, shall be governed by

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N.J.A.C. 7:19-5.14 with respect to any hazardous substance discharged at the facilities prior to the acquisition.

14:9-6.16 Violations and penalties

- (a) An owner or operator of a small water company and/or a small sewer company, that violates the Act or this subchapter, or that fails to comply with any provision of a final joint takeover order, shall be subject to a civil penalty of not more than \$50,000, upon order of a court of competent jurisdiction.
- (b) Each provision violated shall constitute a separate and distinct violation, for which a separate penalty may be assessed.
- (c) Each day that the violation continues shall constitute a separate and distinct violation, for which a separate penalty may be assessed.
- (d) Any penalty assessed under this subchapter may be recovered with costs and, if applicable, interest charges, in a summary proceeding under the "penalty enforcement law", N.J.S.A. 2A:58-1 et seq.
- (e) For any violation of this subchapter, the Board and/or the Department may commence a civil action in Superior Court for appropriate relief, including, without limitation, an injunction, and the reasonable costs of preparing and litigating the case.

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(f) Use by the Board or the Department of any of the remedies provided for in this subchapter shall not preclude use of any other remedy available under this subchapter or any other applicable law.

SUBCHAPTER 7. PURCHASED WATER AND WASTEWATER ADJUSTMENT

[~~CLAUSE~~] CLAUSES

14:9-7.1 Scope, applicability, and general provisions

~~[(a) The rules contained in this subchapter shall apply to the increase or decrease in purchased water charges incurred by a water utility, as defined in N.J.S.A. 48:2-13.~~

~~(b) All requirements set forth in this subchapter shall be satisfied before any utility may receive an increase in rates. The Board shall not, under law, authorize any change in rates for utilities subject to its jurisdiction without an Order in writing. Any utility not wishing to accept the conditions set forth in this subchapter may file for rate relief pursuant to N.J.S.A. 48:2-21 and 48:2-21.1.]~~

(a) This subchapter provides for Board approval of purchased water adjustment clauses (PWACs) and purchased wastewater adjustment clauses (PSTACs), as these terms are defined at N.J.A.C. 14:9-7.2. A PWAC

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or PSTAC allows a utility to include in rates the costs of fluctuations in purchased water or purchased wastewater treatment, without the necessity of a full base rate case.

(b) To be eligible for a PWAC or a PSTAC, a utility shall meet the following requirements, as applicable:

- 1. For a water utility, the utility's purchased water costs, as defined at N.J.A.C. 14:9-7.2, exceed ten percent of its total operating and maintenance expenses; and**
- 2. For a wastewater utility, the utility's purchased wastewater treatment costs, as defined at N.J.A.C. 14:9-7.2, exceed ten percent of its total operating and maintenance expenses.**

(c) The Board approves a PWAC or PSTAC for one year, based on estimates of a utility's cost of purchased water or purchased wastewater treatment, and expected total volume of water or wastewater.

(d) At the end of each year, a utility with an approved PWAC or PSTAC shall:

- 1. Submit to the Board a year-end true-up schedule to reconcile the previous year's actual and estimated costs of purchased water or purchased wastewater treatment; and**

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2. Submit a petition for an adjusted PWAC or PSTAC for the upcoming year.

14:9-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the [content] **context** clearly indicates otherwise.

Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1, and at N.J.A.C. 14:9-1.2.

"Base water consumption" means the [level of consumption] amount of water consumed by customers of a particular water utility, as established in the most recent base rate Board Order, or adjustment clause Board Order [of a] that applies to that water utility. Base consumption is determined by subtracting unaccounted for water from the total [pumpage] amount of water that arrives from the purveyor to the utility water intake.

"Base cost of purchased water" means the cost [of contractually purchased] to a water utility of purchasing water [as] through a contract. The base cost of purchased water is established in the most recent base rate case or adjustment clause case [of a] for that water utility. [Actual] Base cost shall be [reflected] stated as a cost per 1,000 gallons or cost per 1,000,000 gallons unless otherwise specifically approved by the Board.

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"Base cost of purchased wastewater treatment" means the cost of contractually purchased wastewater treatment, as established in the most recent base rate case or through a PSTAC that has been approved through the procedures in N.J.A.C. 14:9-7.6. Purchased wastewater treatment cost shall be stated as a cost per 1,000 gallons or per 1,000,000 gallons, unless otherwise specifically approved by the Board.

"Deferred accounting [treatment]" means the deferral by a utility of accounting, on its books and records, for the amount of its over or under recovery of purchased water or wastewater treatment costs under a PWAC or PSTAC. A utility may request authorization for deferred accounting through a petition filed under N.J.A.C. 14:9-7.6.

"Flat rate basis" means the calculation of costs, rates and/or tariffs based on a method other than a metered basis.

"Metered basis" means the calculation of costs, rates and/or tariffs based on the flow of water or wastewater through a meter.

"New cost of purchased water" means the ~~[Board recognized new increment to the base cost of water from a purveyor to a water utility]~~ base cost of purchased water, plus the increase or decrease in the water purveyor's charges to the utility since the base cost was last approved by the Board.

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"New cost of purchased [sewerage] wastewater treatment" means the [Board recognized new increment to the base cost of purchased sewerage treatment from a purveyor to a wastewater utility] base cost of purchased wastewater, as defined in this section, plus the increase or decrease in the wastewater treatment purveyor's charges to the utility since the base cost was last approved by the Board.

"Operating and maintenance expenses" means the amount a utility uses to pay for day-to-day operations including, but not limited to wages, maintenance, office supplies, etc.

"Purchased wastewater treatment adjustment clause" or "PSTAC" means the provision in a wastewater utility's tariff that authorizes the utility to adjust its rates to compensate for an increase or decrease in the cost of wastewater treatment purchased from a wastewater treatment purveyor.

"Purchased water" means water that a water utility buys from a water purveyor.

"Purchased water adjustment clause" or "PWAC" means the [methodology by which a water utility obtains recognition in its rates of an increase or decrease in the cost of water purchased by it from a water purveyor] **provision in a water utility's tariff that authorizes the utility to adjust its rates to compensate for**

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an increase or decrease in the cost of water purchased from a water

purveyor.

~~["PWAC rate case expenses" means outside consulting, accounting and legal fees, cost of publishing the public notice, cost of room rental for the public hearing, cost of court reporter and transcripts if necessary, cost of programming customer invoices, and other traditional rate case expenses.~~

~~"Revenue tax factor" means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a wastewater utility's last base rate or adjustment clause case.~~

~~"Sewerage treatment purveyor" means any governmental entity, including a utilities authority or commission, empowered by law to establish sales or charges for the treatment of sewerage; or a private entity engaged in the sale of wastewater treatment, whose rates for the sale of sewerage treatment are regulated by the Board.]~~

"True up schedule" means a detailed list which reconciles the actual recovery of costs under the PWAC or PSTAC that is in effect for a particular water or wastewater utility, for a specific period of time, with the Board approved criteria for recovery of such costs, and specifies when this reconciliation will occur.

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"Wastewater treatment purveyor" means either of the following:

- 1. A governmental entity, including a utility authority or commission, that is empowered by law to charge for the treatment of wastewater;**
or
- 2. A private entity, whose rates for the sale of wastewater treatment are regulated by the Board.**

~~["Wastewater treatment utility using a flat rate basis" means any wastewater utility whose rates and tariffs are not designed on a meter flow basis. See comments on parallel definitions in water treatment subchapter, make these match.~~

~~"Wastewater utility using a metered basis" means any wastewater utility whose rates and tariffs are designed on a meter flow basis.]~~

14:9-7.3 [Petitions for purchased water adjustment clauses; truing up schedules; time for filing] Initial PWAC or PSTAC

(a) A water **or wastewater** utility with purchased water costs [exceeding 10 percent of its total Operating and Maintenance expense may file a petition with the Board for approval of [a] **an initial** purchased water adjustment clause [to reflect in its rates an increase or decrease in the cost of water purchased by it.]

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or purchased wastewater treatment clause, provided the utility meets all of the following criteria:

1. The utility's purchased water cost, or purchased wastewater treatment cost, exceeds ten percent of the utility's operating and maintenance expenses;
2. The Board has approved the utility's base rates through a rate case and order during the three years prior to submittal of the petition for an initial PWAC or PSTAC; and
3. The utility has received notice of an increase or decrease in the cost of purchased water from its water purveyor, or in the cost of purchased wastewater treatment from its wastewater treatment purveyor.

~~[After notification of an increase or decrease in charges by its water purveyor, the water utility shall file the petition as soon as it can reasonably compile the data required by this subchapter, but in no event later than 45 days after such notification. The 45-day period may be extended by the Board for just cause based upon mitigating information submitted to the Board by the water utility].~~

(b) To obtain Board approval of an initial PWAC or PSTAC, a utility shall submit a petition that meets the requirements of N.J.A.C. 14:9-7.6. The utility shall submit the petition as soon as possible after the utility receives notice of a change in its purchased water or purchased wastewater

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treatment costs, and no later than forty-five days after receiving such notice. *the Board *** may extend this deadline for just cause.**

(~~b~~) c) No initial purchased water adjustment clause shall be approved unless a water utility, within the prior three years, has had its base rates set by the Board in a decision and order which established base level data against which the new cost of purchased water can be measured. All succeeding adjustment clauses shall reflect the incremental or decremental cost of purchased water.

~~[(c) Within 45 days after its purchased water adjustment clause has been in effect for one year, a water utility shall file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs. The true up schedule may be filed in conjunction with the petitioner's next adjustment clause filing or base rate case. Interest on any over-recoveries shall be calculated through the calendar or clause year and shall be based upon the overall rate of return approved by the Board in the petitioner's last base rate case.~~

~~(d) Refunds that result from a true up may reduce the level of the subsequent purchased water adjustment clause. The Board may, in its discretion, require refunds to ratepayers via a bill credit and/or refund by check, whichever is the most appropriate refund under the specific circumstances. All utilities that are~~

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~~encumbered with a refund liability shall certify to the staff of the Board the date the refund was accomplished and the total amount of the refund.~~

~~(e) A request for deferred accounting as it relates to purchased water shall only be effectuated within the context of an adjustment clause proceeding. The deferred accounting request must meet the original filing requirements of the clause as set out in N.J.A.C. 14:9-8.4. The amount to be deferred may be adjudicated within the context of a subsequent filing of an adjustment clause or base rate case.]~~

(c) Board shall process a petition for approval of a PWAC or PSTAC in accordance with the rules of procedure regarding petitions at N.J.A.C. 14:1-5, the rules regarding contested cases at N.J.A.C. 14:1-8 and the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

(d) An initial PWAC or PSTAC shall remain in effect until the utility's next rate case, provided that the utility submits an annual year-end true up and an annual petition for adjustment of the PWAC or PSTAC amount, in accordance with N.J.A.C. 14:9-7.4.

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14:9-7.4 Year-end true up schedule

(a) Once a purchased water adjustment clause has been in effect for one year, a utility shall submit a true up schedule to the Board. The true up schedule shall compare:

1. The actual cost of purchased water or of wastewater treatment for the previous year; and
2. The estimated costs of purchased water or of wastewater treatment for the previous year, upon which the PWAC or PSTAC for the previous year was based.

(b) The utility shall file the true up schedule within forty-five days after the end of the year covered by the PWAC or PSTAC, regardless of whether the utility files a petition for approval of an adjustment of the PWAC or PSTAC for the following year.

(c) If the utility files a petition for approval of an adjustment of a PWAC or PSTAC for the following year, the utility may file the year-end true up schedule for its previous year's PWAC or PSTAC in conjunction with the utility's petition for the adjustment (see N.J.A.C. 14:9-7.6), or in conjunction with the filing of a base rate case.

(e) If the year-end true up schedule indicates that the utility recovered more under the PWAC or PSTAC than was necessary to reflect its cost of purchased

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water or wastewater treatment during the preceding year, the following shall

apply:

1. The utility shall submit, as part of its true up schedule, a calculation of the interest for the year on the over recovery, in accordance with N.J.A.C. 14:3-13; and
2. Either or both of the following shall apply:
 - i. The Board may require an adjustment that will reduce the utility's revenue under its PWAC or PSTAC for the following year; and/or
 - ii. The Board may require that the utility provide a refund to customers. The Board may, in its discretion, require that refunds be provided through a bill credit, refund check, or other appropriate means.

(e) A utility that is required to provide a refund under this section shall certify to Board staff that the refund was provided, the date upon which it was provided, and the total amount of the refund.

14:9-7.5 Billing

(a) If a utility has a Board approved purchased water adjustment clause or purchased wastewater treatment adjustment clause, the utility shall list and identify any rate adjustment authorized through the clause separately on customer bills.

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**14:9-7.[4] 6 Petition ~~[for purchased water adjustment clauses; content;~~
~~procedures] contents~~**

(a) This section sets forth the content requirements for a petition for:

1. Approval of an initial PWAC or PSTAC;
2. Approval of a year-end true up schedule; and
3. Approval of an adjustment to a PWAC or PSTAC for a year following the year of the initial PWAC or PSTAC.

~~(b) A petition [for approval of a purchased water adjustment clause, for an increase or decrease therein and for the filing for approval of a trueing up schedule shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and the Board's rules on petitions at N.J.A.C. 14:1 and shall]~~ **submitted under this subchapter shall** include the following:

1. A copy of the [contract] **contracts** for purchased water [approved in the water] or purchased wastewater, which formed the basis for the utility's most recent base rate case or [water] adjustment clause case, whichever is later[, and] ;
2. [copies] Copies of the present and [the] proposed purchased water **or wastewater** contracts, including price and detailed financial statements of associated expenses;
3. [2.] 3. The actual number and classes of customers that the utility serves:

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- i. [as] **As** approved in the [water] utility's most recent base rate case or [purchased water] adjustment clause case, whichever is later[,]; and
 - ii. [as] **As** of the end of the most recent calendar year;
4. [3.] **4.** The actual volume of water **or wastewater treatment** purchased:
 - i. [as] **As** approved in the [water] utility's most recent base rate case or [purchased water] adjustment clause case, whichever is later[,]; and
 - ii. [as] **As** of the end of the most recent calendar year;
5. [4.] **5.** [A calculation of a proposed] **An estimate of the** cost per unit of volume **of water or wastewater treatment that the utility will purchase under contracts during the upcoming year if the Board approves the PWAC or PSTAC. The utility shall develop this estimate** using the methodology approved by the Board in the [water] utility's most recent base rate case or [purchased water] adjustment clause case, whichever is later;
6. [5.] **6.** A proposed tariff sheet, entitled "Purchased Water Adjustment Clause[.]" **or "Purchased Wastewater Treatment Adjustment Clause"** ~~[to implement the proposed purchased water adjustment clause. The tariff sheet shall set forth]~~ **that shows** all rate schedules in the [water utility] tariff that [are] **will be** affected by the clause, **if approved**, and how each rate schedule will be affected;
7. [6.] **7.** A copy of each Board Order [, including any stipulation, in] **that approves rates, which was issued as a result of** the [water] utility's most

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recent base rate case [and] or its most recent [purchased water]

adjustment clause case;

~~[7. A true up schedule showing the true up of the proposed cost of purchased water with most recent level of base cost or purchased water and the most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased water or purchased wastewater treatment allowed in the adjustment clause. This schedule shall show the actual recovery of cost under the PWAC currently in effect, with the Board allowed recovery of such costs, including interest on any over recoveries;]~~

8. A detailed description of [the efforts of the water] **all of the following:**

- i. Utility efforts to investigate [and analyze] the basis for any cost increase [in rates] proposed by its [water] purveyor ~~[as well as a detailed description of the water utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure];~~
- ii. **The utility's findings and results of the investigation conducted under i above;**
- iii. **The utility's efforts to negotiate with the purveyor to ensure that the charges are such** that [these] **they will not hamper the utility's efforts to ensure that its** rates are just and reasonable; [and]

9. A [schedule of rate case expenses which includes] list of expenditures that a utility must make to conduct a rate case in accordance with Board

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procedures; including but not limited to consulting, legal and accounting fees[,]; [cost of publishing] **costs of** the public notice, room rental [for public hearing], court reporter and transcripts **for the public hearing**, [and if necessary the cost of reprogramming] **cost of any necessary changes to** customer invoices, and other traditional rate case expenses[. All-rate case expenses shall be amortized and borne by both ratepayer and utility.]; and

10. At the utility's discretion, the utility may include a request for compression or deferred accounting.

(c) The Board shall not accept or consider a request for deferred accounting of PWAC or PSTAC amounts except in the context of an adjustment clause proceeding. The amount that the Board will permit the utility to defer may be adjudicated in a subsequent filing of an adjustment clause or base rate case.

(d) If the Board approves deferred accounting, the utility shall pay interest on the deferred amount in accordance with N.J.A.C. 14:3-13.2.

~~[(b) Base consumption and base costs as set forth in the water utility's previous base rate case shall be established in each subsequent base rate filing.~~

~~(c) Interest on any over recovery shall be considered in each purchased water adjustment clause proceeding and reflected appropriately.~~

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~~(d) The amount of a rate adjustment allowed by the Board in a purchased water adjustment clause proceeding shall be listed separately and identified on customer bills.]~~

(e) A utility shall serve a copy of [the] each petition subject to this section, and all supporting exhibits [shall be served], upon the [Division of the Ratepayer] Public Advocate simultaneously with the filing of the petition with the Board.

(f) In reviewing [the] a petition subject to this subchapter, the Board *** may consider such additional relevant information or financial analysis as it deems appropriate.

~~[(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and the Board's rules on petitions at N.J.A.C. 14:1.]~~

14:9-7.6 [5 Formula for determination of base costs by a water utility using a flat rate basis] Determining the customer charge under a PWAC or PSTAC

(a) This section sets forth the procedure by which a water or wastewater utility shall calculate the amount the utility is authorized to collect from each customer under its PWAC or PSTAC. The utility shall present this

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calculation to the Board for its review and approval as part of a petition submitted under N.J.A.C. 14:9-7.5.

(b) To determine the customer charge under a PWAC or PSTAC, a utility shall apply the equation in Table B below, for all customers charged for service on a flat rate basis, and the equation in Table C below for all customers charged on a metered basis.

Table B

Determining PWAC or PSTAC Customer Charge– Flat Rate Basis

[Purchased Water Adjustment Clause (PWAC)]

Utility's base cost of purchased water or wastewater at time of petition submittal

+/- New cost of purchased water **or wastewater**

+/- Rate case [expense] **expenses from (b)10 above**

+/- [Compression and or Deferred Accounting] **Amount of costs and expenses compressed or deferred, if any**

x Revenue tax factor, **that is, the multiplier applied to recoup the Gross Receipts and Franchise Taxes at the rate established in the utility's last base rate or adjustment clause case** [= Sum of Allowable Expenses]

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≡ Total allowable expenses

/ Number of customers by class [= Annual Charge / Billing Cycle Per Customer =
Base Cost.]

≡ PWAC or PSTAC charge per customer for the upcoming year

**[14:9-7.6 Formula for determination of costs by a water utility using a
metered basis]**

Table C

Determining PWAC or PSTAC Customer Charge – Metered Basis

[Purchased Water Adjustment Clause] **Base cost of purchased water or
wastewater**

+/- New cost of purchased water **or wastewater**

+/- Rate case [expense] **expenses from (b)10 above**

+/- [Compression and or Deferred Accounting] **Amount of costs and
expenses compressed or deferred, if any**

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x Revenue tax factor, **that is, the multiplier applied to recoup the Gross Receipts and Franchise Taxes at the rate established in the utility's last base rate or adjustment clause case** [= Sum of Allowable Expenses]

= Total allowable expenses

/ [~~Base Consumption (Pumpage (what you take in) less unaccounted for water)~~] **Base water consumption or base wastewater treatment**

[/] x [~~Base Consumption (Per tariff units Billing Cycle)~~] **Sum of all water delivered to customers, as measured at customers' meters**

≡ [~~Purchased Adjustment Clause Cost per Unit over Billing Cycle~~] **PWAC or PSTAC charge per thousand gallons for the upcoming year**

~~[SUBCHAPTER 8. PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSE~~

14:9-8.1 Scope

(a) ~~The rules contained in this subchapter shall apply to the increase or decrease in sewerage treatment charges incurred by a wastewater utility, as defined in N.J.S.A. 48:2-13.~~

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~~(b) All requirements set forth in this subchapter shall be satisfied before any utility may receive an increase in rates. The Board shall not, under law, authorize any change in rates for utilities subject to its jurisdiction without an Order in writing. Any utility not wishing to accept the conditions set forth in this subchapter may file for rate relief pursuant to N.J.S.A. 48:2-21 and 48:2-21.1.~~

14:9-8.2 Definitions

~~The following words and terms, when used in this subchapter, shall have the following meanings unless the content clearly indicates otherwise.~~

~~"Base sewerage treatment" means the level of sewerage treatment as established in the most recent base rate Board Order, or adjustment clause Board Order of a wastewater utility.~~

~~"Base cost of purchased sewerage treatment" means the cost of contractually purchased sewerage treatment as established in the most recent base rate or adjustment clause case of a wastewater utility. Actual cost shall be reflected as cost per 1,000 gallons or per 1,000,000 gallons unless otherwise specifically approved by the Board.~~

~~"Deferred accounting treatment" means the deferring on the books and records of a wastewater utility of the difference between the expenses imposed upon it by a sewerage treatment purveyor for purchased sewerage treatment, and the amount of expense currently approved by the Board for inclusion in rates for recovery of this expense.~~

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~~"New cost of purchased sewerage treatment" means the Board recognized new increment to the base cost of purchased sewerage treatment from a purveyor to a wastewater utility.~~

~~"Public entity" means any governmental entity, including a utilities authority, empowered by law to establish rates or charges for the sale of sewerage treatment.~~

~~"Purchased sewerage treatment adjustment clause" or "PSTAC" means the methodology by which a wastewater utility obtains recognition in its rates of an increase or decrease in the cost of sewerage treatment purchased by it from a sewerage treatment purveyor.~~

~~"PSTAC rate case expenses" means outside consulting, accounting and legal fees, cost of publishing the public notice, cost of room rental for the public hearing, cost of court reporter and transcripts if necessary, cost of programming customer invoices and other traditional rate case expenses.~~

~~"Revenue tax factor" means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a wastewater utility's last base rate or adjustment clause case.~~

~~"Sewerage treatment purveyor" means any governmental entity, including a utilities authority or commission, empowered by law to establish sales or charges for the treatment of sewerage; or a private entity, whose rates for the sale of sewerage treatment are regulated by the Board.~~

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~~"Truing up schedule" means a detailed analysis reconciling the actual recovery of costs under the PSTAC currently in effect with the Board allowed recovery of such costs.~~

~~"Wastewater utility" means any investor owned wastewater utility subject to regulation by the Board that purchases sewerage treatment from a wastewater treatment purveyor.~~

~~"Wastewater treatment utility using a flat rate basis" means any wastewater utility whose rates and tariffs are not designed on a meter flow basis.~~

~~"Wastewater utility using a metered basis" means any wastewater utility whose rates and tariffs are designed on a meter flow basis.~~

~~14:8.3 Petitions for purchased sewerage treatment adjustment clauses; truing up schedules; time for filing~~

~~(a) A wastewater utility with purchased sewerage treatment costs exceeding 10 percent of its total Operating and Maintenance expense may file a petition with the Board for approval of a purchased sewerage treatment adjustment clause to reflect in its rates an increase or decrease in the cost of sewerage treatment purchased by it. After notification of an increase or decrease in charges by its sewerage treatment purveyor, the wastewater utility shall file the petition as soon as it can reasonably compile the data required by this subchapter, but in no event later than 45 days after such notification. The 45-day period may be extended by the Board for just cause based upon mitigating information submitted to the Board by the wastewater utility.~~

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~~(b) No initial purchased sewerage treatment adjustment clause shall be approved unless a wastewater utility, within the prior three years, has had its base rates set by the Board in a decision and order, which established base level data against which the new cost of purchased sewerage treatment can be measured. All succeeding adjustment clauses will reflect the incremental or decremental cost of purchased sewerage treatment.~~

~~(c) Within 45 days after its purchased sewerage treatment adjustment clause has been in effect for one year, a wastewater utility shall file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs. The true up schedule may be filed in conjunction with the petitioner's next adjustment clause filing or base rate case. Interest on any over recoveries shall be calculated through the calendar or clause year and shall be based upon the overall rate of return approved by the Board in the petitioner's last base rate case.~~

~~(d) Refunds that result from a true up may reduce the level of the subsequent purchased sewerage treatment adjustment clause. The Board may require refunds to ratepayers via a bill credit and/or refund by check, whichever is the most appropriate refund under the specific circumstances. All utilities that are encumbered with a refund liability shall certify to the staff of the Board the date the refund was accomplished and the total amount of the refund.~~

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~~(e) A request for deferred accounting as it relates to purchased sewerage treatment shall only be effectuated within the context of an adjustment clause proceeding. The deferred accounting request must meet the original filing requirements of the clause as set out in N.J.A.C. 14:9-8.4. The amount to be deferred may be adjudicated within the context of a subsequent filing of an adjustment clause or base rate case.~~

~~14:9-8.4 Petitions for purchased sewerage treatment adjustment clauses; content; procedures~~

~~(a) A petition for approval of a purchased sewerage treatment adjustment clause, for an increase or decrease herein, and for the filing for approval of a truing up schedule shall include the following:~~

- ~~1. A copy of the contract for purchased sewerage treatment approved in the wastewater utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and copies of the present and the proposed purchased sewerage treatment contracts, including price and detailed financial statements of associated expenses;~~
- ~~2. The actual number and classes of customers as approved in the wastewater utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;~~

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- ~~3. The actual volume of sewerage treatment purchased as approved in the wastewater utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;~~
- ~~4. A calculation of a proposed cost per unit of volume using the methodology approved by the Board in the wastewater utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later;~~
- ~~5. A proposed tariff sheet, entitled "Purchased sewerage Treatment Adjustment Clause," to implement the proposed purchased sewerage treatment adjustment clause. The tariff sheet shall set forth all rate schedules in the wastewater utility's tariff that are affected by the clause;~~
- ~~6. A copy of each Board Order, including any stipulation, in the wastewater utility's most recent base rate case and its most recent purchased sewerage treatment adjustment clause case;~~
- ~~7. A schedule showing the true up of the proposed cost of purchased sewerage treatment with the most recent level of base cost of purchased sewerage treatment and the most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased sewerage treatment allowed in the adjustment clause. This schedule shall show the actual recovery of cost under the PSTAC currently in effect, with the Board allowed recovery of such costs, including interest on any over recoveries;~~

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~~8. A detailed description of the efforts of the wastewater utility to investigate and analyze the basis for any increase in rates proposed by its sewerage treatment purveyor as well as a detailed description of the wastewater utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure that these rates are just and reasonable; and~~

~~9. A schedule of rate case expenses which includes consulting, legal and accounting fees, cost of publishing the public notice, room rental for public hearing, court reporter and transcripts, and if necessary the cost of reprogramming customer invoices and other traditional rate case expenses. All rate case expenses shall be amortized and borne by both ratepayer and utility.~~

~~(b) Base levels of sewerage treatment and base costs as set forth in the wastewater utility's most recent previous base rate case shall be established in each subsequent base rate filing.~~

~~(c) Interest on any over recovery shall be considered in each purchased sewerage treatment adjustment clause proceeding and reflected appropriately.~~

~~(d) The amount of a rate adjustment allowed by the Board in a purchased sewerage treatment adjustment clause proceeding shall be listed separately and identified on customer bills.~~

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~~(e) A copy of the petition and all exhibits shall be served upon the Division of the Ratepayer Advocate simultaneously with the filing of the petition with the Board.~~

~~(f) In reviewing the petition, the Board may consider such additional relevant information or financial analysis as it deems appropriate.~~

~~(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.~~

~~14:9-8.5 Formula for determination of base costs by a wastewater utility using a flat rate basis~~

~~Purchased sewerage Treatment Adjustment Clause (PSTAC)~~

~~+/- New Cost of Purchased sewerage Treatment~~

~~+/- Rate Case Expense~~

~~+/- Compression and/or Deferred Accounting~~

~~x Revenue Tax Factor = Sum of Allowable Expenses~~

~~/ Number of Customers By Class = Annual Charge Per Customer (Billing Cycle = PSTAC~~

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~~14:9-8.6 Formula for determination of costs by a wastewater utility using a metered basis~~

~~—Purchased sewerage Treatment Adjustment Clause~~

~~+/- New Cost of Purchased sewerage Treatment~~

~~+/- Rate Case Expense~~

~~+/- Compression and/or Deferred Accounting~~

~~x Revenue Tax Factor = Sum of Allowable Expenses~~

~~/ Base sewerage Treatment Costs~~

~~/ Base sewerage Treatment (Per tariff units) (Billing Cycle = Adjustment~~

~~Clause cost per unit over Billing Cycle.]~~

~~]~~

SUBCHAPTER 8 COMBINED DOMESTIC WATER AND FIRE SUPPRESSION SERVICE

14:9-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Additional definitions that apply to this subchapter can be found at N.J.A.C.

14:9-1.2, and at N.J.A.C. 14:3-1.1.

“DCA” means the Department of Community Affairs.

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“Domestic water service” means potable water supplied by a water utility that meets or exceeds New Jersey Safe Drinking Water regulations, found at N.J.A.C. 7:10-1.3.

“Multi-use service” means water that is supplied to a structure through one water line, and which is used inside the structure for domestic water as well as to supply water to fire suppression devices such as sprinklers.

“Customer’s water system” means all water facilities on the customer’s side of the meter, which are owned or controlled by the customer.

14:9-8.2 Required water tariff filings and amendments

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(a) A water utility that is required under N.J.A.C. 14:1-11 to file a tariff with the Board after {effective date of this rule} shall ensure that the tariff complies with this subchapter.

(b) A water utility that has filed a tariff prior to {effective date of this rule}, which is in effect as of {effective date of this rule}, shall submit an amendment to the tariff, or a new tariff page(s), in order to ensure compliance with this subchapter. The water utility shall submit the amendment or new tariff page(s) by {90 days after the effective date of this rule}.

14:9-8.3 Tariff provisions for multi-use service

(a) Each water utility that provides multi-use service, as defined at N.J.A.C. 14:9-8.1, shall include in its tariff the language required in this section. The water utility shall place the language in the tariff in the location required in this section.

(b) The following language shall be located in the tariff in a Terms of Payment section governing multi-use service, or in a general Terms of Payment section:

“A water utility may terminate a customer’s multi-use service for non-payment of a valid water bill for multi-use service, in accordance

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**with the Board's rules governing discontinuance of service at
N.J.A.C. 14:3-3.6."**

**(c)The following language shall be located in the tariff in a Conditions
section that governs multi-use service:**

"By applying for multi-use service, the customer certifies that:

- 1. The customer has hydraulically calculated the demand for the
customer's water system, based on the simultaneous domestic
demand and fire sprinkler demand. The customer shall make this
calculation in accordance with the Uniform Construction Code;
including but not limited to National Fire Protection ("NFPA")
standards 13, 13R and 13D, as amended and supplemented,
which are incorporated herein by reference and are available at
www.nfpa.org; and**
- 2. The customer has obtained a plan release or construction permit
from the municipal officials with jurisdiction over the system."**

**(d) The following language shall be located in the tariff in a General Terms
and Conditions section that applies to all regulated water services:**

**"By applying for multi-use service, the customer agrees to be
responsible for all claims, costs, and liability for personal injury,
death and/or property damage, resulting from the customer's**

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individual water system, unless caused by the negligence of the water utility."

(e) The following language shall be located in the tariff in a Provision of Services section that governs multi-use service:

"By applying for multi-use service, and operating the same, the customer agrees:

- 1. To include a backflow prevention device(s) as defined at N.J.A.C. 7:10-1.3, and as specified at N.J.A.C. 7:10-10.3;**
- 2. To be solely responsible for all costs and expenses relating to the installation, operation, maintenance, repair and replacement of the customer's water system, including the fire suppression system and backflow prevention device(s);**
- 3. To ensure that the customer's water system complies with the applicable requirements of the UCC, including any applicable building, plumbing and fire protection subcodes; and**
- 4. To ensure that the customer's water system is maintained in accordance with all applicable law so as to protect against backflow, back-siphonage and contamination of the potable water system."**

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(g) A water utility shall supply multi-use service to a customer upon request, unless the utility can show good cause or a compelling reason to refuse to supply multi-use service.

(h) A water utility's intent to impose a higher safety standard than that set by DCA shall not constitute good cause or a compelling reason to refuse multi-use service to a customers.

SUBCHAPTER [10] 9 CONSUMER CONFIDENCE REPORTS

14:9-[10] 9.1 Consumer Confidence Reports

[a)] On or before July 1 of each year, each water utility shall submit to the Board a copy of the Consumer Confidence Report that the utility is required to [be delivered annually to their customers] prepare pursuant to the "Safe Drinking Water Act Amendments of 1996," 40 CFR 141.

~~[(b) If a Consumer Confidence Report is not required to be mailed to each of the water utility's customers, the water utility shall supply the Board with any required notice and a copy of the report that is available to the customer upon request.~~

~~—}~~